FÓRSA

Submission to the Department of Enterprise, Trade and Employment public consultation on Ireland's action plan for collective bargaining

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- Use EU and national funding streams for capacity building initiatives for trade unions.
- Ratify ILO Conventions Labour Relations (Public Services) Convention No 151 (1978), and the Collective Bargaining Convention No 154 (1981).
- Commission the ILO to review possible approaches to enhance collective bargaining in Ireland.
- Consider approaches to establish sectoral bargaining and extension mechanisms for collective agreements with the social partners.
- Enshrine a right in law to collectively bargain, applicable to all employees, and which prohibits employers from excluding or denying individual or groups of employees from collective bargaining.
- Enshrine a right in law for trade unions to access workers, both physically and digitally, and including all workplace locations, rosters and shifts.
- Introduce a right in law for the provision of appropriate facilities for trade union activity at workplaces.
- Introduce tax relief on trade union subscriptions.
- Consider proposals to allow unions to collect subscription fees or union dues from all employees (i.e. a solidarity contribution fee).
- Remove the employer veto on the operation of Joint Labour Committees.
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- Compel social partners to provide local relevant data required to engage in negotiations in a timely and digestible manner.
- Make company accounts available to trade unions free of charge.
- Introduce legislation to protect workers against dismissal for trade union activity during and outside of contracted working hours.
- Significantly increase financial penalties for employers who break employment laws.
- Include membership of a trade union as a protected ground from discrimination.
- Introduce legislation giving workers the right to establish and join trade unions.
- Introduce conditionality that requires organisations in receipt of public funding to promote collective bargaining and comply with the aims of the Adequate Minimum Wages Directive.
- Introduce conditionality that requires organisations in receipt of public contracts to promote collective bargaining, have union-negotiated collective agreements in place, and comply with the aims of the Adequate Minimum Wages Directive.
- Oblige state-sponsored bodies to engage in good faith engagement on collective bargaining and ensure bodies have union-negotiated collective agreements in place.
- Make work permits conditional on sectoral collective agreements.
- Introduce tax credits for employers engaging in collective bargaining.

Section 1

Introduction

Fórsa welcomes the opportunity to make a submission to the Department of Enterprise, Trade and Employment (DETE) 'Public Consultation on Ireland's Action Plan to promote Collective Bargaining'.

Fórsa represents 89,000 workers in the public and civil service including health, education and local authorities, as well as staff in the commercial state sector, state agencies, private companies and the community and voluntary sector. Our membership is varied, including those who are covered by union-negotiated collective agreements and those in employments with no access to collective bargaining.

Fórsa is an affiliate union of the Irish Congress of Trade Unions (ICTU), and this submission should be read in conjunction with ICTU's response to this consultation, which Fórsa supports.

In this submission, we will respond to each of the questions asked in the online form (as linked here), as well as provide further context as to the barriers and obstacles to promoting collective bargaining in Ireland through a series of case examples involving Fórsa and employers (see Appendix). These examples will be referred to throughout the document, as they provide context as to why strengthened legal rights to collective bargaining and trade union membership and activity is required.

Article 4 of the EU Directive on Adequate Minimum Wages requires each member state in which the collective bargaining coverage rate is less than a threshold of 80% to provide for a 'framework of enabling conditions' for collective bargaining and establish an action plan by end of 2025 to promote collective bargaining.

As set out by DETE, the objective of this consultation is to gather views from relevant stakeholders in relation to the possible content of Ireland's national action plan and how Ireland can progressively increase and promote collective bargaining.

For the avoidance of doubt, collective bargaining is the process by which working people come together and through their trade unions, negotiate contracts with their employers to determine fair conditions of employment.

The right to collectively bargain is essential to ensuring that working people have the capacity to improve their living standards, provide for their families and build a strong foundation for our economy.

Ireland's collective bargaining coverage is around 34% according to the OECD/AIAS ICTWSS database,[1] almost half that of the average rate for the European Union. The average rate for the EU is just above 60%, while eight countries have achieved more than the 80% threshold of collective bargaining coverage. Ireland's status appears even more bleak when compared solely to the EU14 (states that were members of the EU before the 2004 eastern expansion, minus the UK). Ireland's rate of collective bargaining coverage is the second-lowest in the EU14, ahead of only Greece, and less than half the EU14 average of 73%. Reasons for why this is the case are

[1] *OECD and AIAS (2021), Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts, OECD Publishing, Paris,* www.oecd.org/employment/ictwss-database.htm.

described in the 2021 Fórsa report 'Collective Benefit: Harnessing the power of representation for economic and social progress'.[2] The report argues that without state intervention and legal obligations on employers to negotiate with unions, high collective bargaining coverage cannot be achieved in the absence of high union density. The report recommends that the state intervene in industrial relations to promote collective bargaining and increase union density, as well as introduce economic incentives.

Given the distance Ireland must go to achieve the 80% threshold, decisive action, including legislative and non-legislative measures, will be required in order to progressively increase and promote collective bargaining across Irish employment. Furthermore, proactive measures are needed to combat the significant decline of collective bargaining coverage which has taken place over recent decades. Low union density poses a challenge to good collective agreements that benefit both workers and employers, therefore any measures to promote collective bargaining should also promote and incentivise trade union membership and assist in addressing declining density.

Final Report of the Labour Employer Economic Forum High Level Working Group

At the outset of this submission, we wish to express our support for the recommendations contained in the Final Report of the Labour Employer Economic Forum (LEEF) High-Level Working Group.[3] The group was established in March 2021, to review Ireland's collective bargaining landscape and to make recommendations for improvement. Fórsa General Secretary Kevin Callinan was a member of this group. Its recommendations were agreed by the social partners and were approved by the government in October 2022. This report should have been implemented in full following its agreement. Yet, more than two and a half years later, both workers and employers are still waiting for progress to be made. This prolonged delay undermines the credibility of the process and disrespects those who contributed to it in good faith. There is now a clear opportunity to build upon the recommendations set out in the report, in a way which strengthens workers' access to union-negotiated collective bargaining and expands collective bargaining coverage across Ireland – fulfilling the objectives of the EU Adequate Minimum Wages Directive.

[2] Fórsa (2021) Collective Benefit: Harnessing the power of representation for economic and social progress.
[3] Final Report of the LEEF High Level Working Group (October 2022).

Section 2

This next section of the submission responds to the questions asked in the DETE online Microsoft Form.

Views in relation to training or other capacity building activities which would assist the social partners to engage in collective bargaining

Funding for capacity building activities

The regulation to establish the European Social Fund Plus (ESF+), established in 2021, explicitly states areas where member states must spend a minimum amount of their allocation. Ireland is required to spend 25% of the ESF+ allocation on social inclusion measures, 5% on tackling child poverty, and 3% on addressing material deprivation. It also requires all Member States to allocate an appropriate amount to the capacity building of social partners and civil society, recognising that the capacity of social partners and civil society is central to the successful implementation of the ESF+ and the policies the Fund supports.[4]

Fórsa recommends that the State complies with the ESF+ regulation and allocates an appropriate amount of funding under its ESF+ 2021-2027 budget towards capacity building initiatives which would support trade unions to build and strengthen their capacity. Such initiatives will include:

- funding to support trade unions to engage in organising campaigns;
- recruitment campaigns;
- training of union staff, activists and members;
- hiring of staff;
- funding for research projects, events, campaigns, and study visits;
- networking measures;
- strengthening of social dialogue, and;
- initiatives to address declining trade union density.

Other funding streams, including but not limited to the National Training Fund, should be used to develop and provide training for those engaging in or with an interest in collective bargaining, with the aim of promoting collective bargaining across employments, improving negotiation skills, improving industrial relations outcomes, and increasing Ireland's collective bargaining coverage rate.

Ratify outstanding ILO Conventions

The EU Directive on Adequate Minimum Wages was inspired by existing ILO Conventions, namely Freedom of Association and Protection of the Right to Organise Convention No 87 (1948), the Right to Organise and Collective Bargaining Convention No 98 (1949), the Labour Relations (Public Services) Convention No 151 (1978), and the Collective Bargaining Convention No 154 (1981). Ireland has not yet ratified the Labour Relations (Public Services) Convention No 151 (1978) or the Collective Bargaining Convention No 154 (1981).[5] Fórsa recommends that the government move to ratify conventions 151 and 154. Additionally, Fórsa supports the

[4] ESF+ in partnership | European Social Fund Plus
[5] Up-to-date Conventions not ratified by Ireland

recommendation that the government commission the ILO, in collaboration with government and social partners, to undertake a review of mechanisms for building and strengthening collective bargaining, with a particular focus on sectoral bargaining. This review could be carried out using the EU Technical Support Instrument.

Consider approaches to sectoral bargaining with the social partners

Across many European countries, sectoral level bargaining and extension mechanisms are responsible for bringing large cohorts of the labour market into collective agreements. However, union membership is not necessarily advanced through these methods and pose challenges for union density. For example, France has very high collective bargaining coverage at 93% (OECD-AIAS Database), however has trade union density of approximately 11%. Its declining density has been linked to the use of extension mechanisms, and similar declines should be avoided in Ireland. Measures to promote union-negotiated collective agreements should be considered in the context of the impact on trade union density. A review of a sectoral bargaining approach, alongside other measures to build and strengthen collective bargaining, could provide evidence and recommendations on best practice approaches to strengthen collective bargaining without adverse effects on trade union density. Fórsa recommends that the government work with the social partners to consider approaches to establish sectoral bargaining and extension mechanisms for collective agreements. (e.g. re-instate extension mechanisms for sectoral Registered Employment Agreements (REAs).

A right to collectively bargain

There exist no legislative protections for workers who wish to engage in collective bargaining in the workplace, and no rights for employees to be represented by their union. The Irish Human Rights and Equality Commission recommended that the State take immediate action to rectify this absence of legal protection,[6] and to resolve the imbalance of power which exists between employers and employees in the labour market.[7] Furthermore, the ESRI has also highlighted the lack of legislative rights for union recognition for collective bargaining purposes.[8] These views are shared by Professor Michael Doherty, with expertise in the areas of Irish and EU employment and labour law, industrial relations, and social dialogue and collective bargaining; and by Dr Alan Bell and Professor David Kenny Eustace who conclude that the Irish Constitution only provides statutory protection for freedom of association, which includes collective bargaining, rather than any obligations on employers to recognise trade unions or give right to employees to be represented by their union for collective bargaining.[9]

It is Fórsa's position that the State must enshrine in law the right for workers to have the union recognised to collectively bargain on their behalf, and that such a right be applicable to all employees, and prevent instances where employers attempt to exclude or deny individual or groups of members from collective bargaining.

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[6] IHREC (2024), *Ireland and the International Covenant on Economic, Social and Cultural Rights - Submission to the Committee on Economic, Social and Cultural Rights on Ireland's fourth periodic report,* p.80.
[7] IHREC (2023), *Ireland and the Sustainable Development Goals - Submission to the 2023 UN High-Level Political Forum on the second Voluntary National Review of Ireland,* (pages not numbered).
[8] James Laurence, James, Kelly, Eilish, McGinnity, Frances, Curristan, Sarah (2023), *Wages and Working Conditions of Non-Irish Nationals in Ireland*, ESRI, p.10.
[9] Bell and Eustace (2023), Collective Bargaining and The Irish Constitution—Barrier or Facilitator?, p.31.

Fórsa is aware of instances where employers have sought to exclude and deny individual workers or specific grades of workers from collective bargaining through the use of individual contracts or bogus-self-employment contracts. This should not be permitted, and legislation to prohibit such mechanisms to prevent collective bargaining should be introduced.

Fórsa is also aware of employers establishing internal mechanisms, such as staff panels and employee representative groups, to avoid recognising the union and to attempt to restrict collective bargaining in the workplace. Employers should not be able to utilise these mechanisms to avoid union recognition and good faith engagement with trade unions on collective bargaining matters; collective bargaining is engagement between the union and the employer.

Ireland's collective bargaining structure is "voluntary", meaning that employers and unions voluntarily engage in collective bargaining. While employees have a right to join a trade union, their employer is not obliged to recognise or bargain with their trade union – therefore creating an imbalance of power between the employer and employee whereby the employer holds a vetoing power regarding union recognition. State intervention is required to assist workers and their unions with achieving formal recognition for the purposes of collective bargaining.

Fórsa has many past and current examples of the impact of the voluntarist system and how it has negatively impacted workers. See Appendix: Case: Ryanair and Fórsa (2017); Case: Stobart Air and Fórsa (2019); Case: Emerald Airlines and Fórsa (2023); Case: Land Development Agency and Fórsa (2023 – present).

A right for trade unions to access workers

Recital 24 of the Directive says that measures to promote collective bargaining might include measures to ease the access of trade union representatives to workers.[10] Trade union access to the workplace is integral to the work of trade unions and to their proper functioning. This includes how they engage in recruitment, bargaining activities, organising, and communicating with members and potential members about the benefits of union membership, as well as discussing workplace matters.

There is no legal right for trade unions to access workplaces in order to carry out their functions in Ireland, as identified by the International Labour Organisation (ILO) IRLEX legal database on industrial relations. However, it identifies legislation around trade union access in Belgium, Bulgaria, Denmark, Finland, Hungary, Italy, Slovakia, Spain and Sweden. Outside of the European Union, legislation permitting trade union access to workplaces exists in Australia and New Zealand, among others.

In Ireland, employers effectively hold a veto on union recognition and can consistently prevent unions from accessing their members and non-members in the workplace. This imbalance of power must be seriously addressed by the government if the State is to progressively increase the rate of collective bargaining coverage.

Fórsa recommends that the government introduce legislation enshrining a right of access to workers for trade unions to enable trade union representatives to carry out their work effectively. Access must be both physical and digital, facilitating unions to communicate with employees through electronic communication, for example to those working remotely or in alternative site locations. Examples of digital access include, but are not limited to, the use of intranets and other

[10] Directive - 2022/2041 - EN - EUR-Lex

electronic equivalents of physical noticeboards, the use of work emails for union activity, and facilitating access for union representatives to use bulk email facilities to contact employees (union members and non-members alike) for information purposes and recruitment activities. The existing 1993 Code of Practice on Duties and Responsibilities of Employee Representatives[11] is outdated and does not reflect the modern era of work, therefore failing to properly enable workplace representatives to carry out their functions and responsibilities.

Right of access must include all workplace locations, rosters and shifts. In addition to establishing this right of access, the government should also provide for in law that appropriate facilities are provided on-site for union representatives to carry out their functions and meet with employees. Furthermore, trade union representatives and members should have the right to appropriate paid time off to attend union training and meetings, and trade union activities conducted by trade union representatives should be facilitated and recognised when considering the employee's workload.

Access to employee induction processes is a vital opportunity for trade union organising. Establishing a right of access for trade union representatives to participate and access induction meetings, and processes that would allow them to introduce themselves to newly hired employees and inform them about the benefits of trade union membership is essential for strengthening collective bargaining and organising activities. This early engagement is crucial to displaying to the workforce that the employer supports collective bargaining and does not oppose unionising. It also assists unions with organising and addressing declining trade union density. It would support workers to make an informed decision about whether they wish to join a trade union, strengthen collective representation in the workplace, and would contribute to the promotion of collective bargaining more broadly across Irish employment.

See Appendix: Case: Land Development Agency and Fórsa (2023– present)

Reinstate Tax Relief for trade union subscriptions.

Tax relief on trade union subscriptions was abolished in Budget 2011 as an austerity measure. However, tax relief for subscriptions to business and professional organisations was maintained, despite an announcement that all such reliefs were to be abolished. The absence of this tax relief disproportionately affects trade union members and should be rectified on grounds of fairness and equity, and in recognition of the important role played by trade unions in Irish society. Re-introducing tax relief on trade union subscriptions would provide parity between professional organisations and unions and bring Ireland in line with best European and international practice. It would also support the goals of the Adequate Minimum Wages Directive in promoting collective bargaining.

Solidarity contribution from non-members

In Ireland, the collective bargaining coverage rate is approximately 34% (as of 2017), and trade union density is approximately 26.2% (as of 2020).[12] In Ireland, there is a strong relationship between trade union membership and union-negotiated collective agreements. "Free-riding" is a growing problem for trade unions, primarily because of the associated costs of union organising and the financial loss incurred from non-members benefitting from improved pay and conditions

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[11] Codes of Practice - Workplace Relations Commission

[12] *OECD and AIAS (2021), Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts, OECD Publishing, Paris,* www.oecd.org/employment/ictwss-database.htm.

without contributing to the collective effort or bearing the costs of membership subscription fees or participating in collective industrial action.[13] The "free-rider" problem is even more apparent in employments where there are multi-employer or sectoral agreements or extension mechanisms.

To help address the issue of "free-riders" and declining density, and to build and strengthen the capacity of trade unions through incentivising membership, Fórsa recommends the government consider proposals to allow unions to collect subscription fees or union dues from all employees, including members and non-members, similar to the Rand Formula which exists in Canada.

Views in relation to the operation of Joint Labour Committees and how social partners can be incentivised to participate in them

Fórsa recommends that the government develop additional Joint Labour Committees (JLCs) in appropriate sectors, in line with the recommendations in the Final Report of the LEEF High Level Working Group and ensure all participants of JLCs undergo appropriate training. Furthermore, the government should remove the employer veto which hinders the proper functioning of JLCs.

Views on a proposal to have a Good Faith Engagement process at enterprise level which would involve a single mandatory meeting between an employer and a trade union

The Labour Economic Employment Forum (LEEF) High Level Group in its Final Report reached consensus on good faith engagement between employers and trade unions and concluded that parties should be encouraged to engage with one another and that imposing an obligation on them to engage does not compel them to reach any outcome or agreement.

Good faith engagement requires ongoing bargaining, negotiation and dialogue. It is Fórsa's view that a single mandatory meeting between an employer and a trade union is insufficient in meeting the intention of the Adequate Minimum Wages Directive. There is a risk that the obligation to engage in a single mandatory meeting may only be fulfilled as a matter of compliance rather than with sincere intention to engage in meaningful and informed negotiations with the aim of achieving agreement.

Fórsa recommends, that instead of a single mandatory meeting, where there is a request to engage in negotiations, that a mandatory process of engagement is followed which allows for more meaningful, and constructive engagement between parties, facilitating informed negotiations, with increased likelihood of reaching agreement.

While the Final Report of the LEEF High Level Working Group outlines key elements of good faith engagement, many Fórsa officials have encountered behaviour that can only be characterised as bad faith in industrial relations from employers. Fórsa representatives have been subjected to

[13] Geary and Belizón (2024) Who are the union free-riders in Ireland? Evidence from the Working in Ireland Survey

unresponsive employers, refusals to meet or respond to correspondence, and delay tactics to avoid union recognition and/or collective bargaining.

The Final Report of the LEEF High Level Group outlines key elements of good faith engagement, the absence of which or opposite of constitutes bad faith. Fórsa representatives have frequently encountered employer behaviours that undermine constructive dialogue and meaningful engagement and negotiation, including a lack of responsiveness, unfair conduct such as refusals to meet or respond to written representations made by the union on behalf of employees, and deliberate delay tactics.

As a single mandatory meeting does not constitute good faith engagement, it is clear that a process is required. It is likely that an employer who has refused to recognise a trade union, and requires a good faith engagement process, will not agree to recognise the union at a single mandatory meeting, and further dialogue may be required. The employer should be compelled to continue ongoing engagement and dialogue. The government should also consider the impact of good faith engagement on the Workplace Relations Commission, as it is likely that their expertise and assistance will be required to assist parties in negotiations.

See Appendix: Case: Ryanair and Fórsa (2017); Case: Land Development Agency and Fórsa (2023 – present); Case: Emerald Airlines and Fórsa (2023)

Views in relation to how negotiations between social partners on wages could be promoted and facilitated

Negotiations between social partners can be meaningfully promoted and facilitated through a combination of legislative, non-legislative, financial and non-financial measures. Firstly, it is essential that a right to collectively bargain is enshrined in law. This must be accompanied by strengthening protections for workers from victimisation for participating in collective bargaining activities or for their membership of a trade union.

Negotiations can be further facilitated through the introduction of a mandatory engagement process, which compels employers to negotiate with trade unions representing their employees for the purposes of collective bargaining. Such an obligation, where access to data is provided on an equal footing, would lead to more meaningful, structured engagement and is more likely to result in positive industrial relations outcomes.

Furthermore, and as already outlined, the State has a critical role in supporting collective bargaining activity and the building and strengthening of the capacity of social partners. Fórsa recommends the State provide financial support to trade unions to strengthen their membership base, particularly through the recruitment of young workers, and to support the organisational activities of unions. Such support would help to address declining density in unions, and in turn, support the achievement of increased collective bargaining coverage across the labour market.

Views on how the social partners could better access the information required to engage in negotiations

Adequate and timely access to information is critical to negotiations between trade unions and employers. Article 4(1)(b) states that Member States, with the involvement of the social partners, in accordance with national law and practice, shall "encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting".

The State can contribute to the provision of information in two ways: by ensuring the provision of appropriate macro-economic data for all social partners; and by compelling social partners to provide local relevant data in a timely and digestible manner.

At present, trade unions must pay to access company accounts through the Companies Registration Office (CRO) which is not consistent with "an equal footing". Fórsa recommends that the filing of company accounts be improved and that company accounts are made available to trade unions free of charge.

All criteria that are used to determine workers' pay, pay levels and pay progression must also be made available to workers and their representatives to facilitate informed negotiations on wages between the employers and trade unions.

Views on whether Ireland's protections, including Codes of Practice, are adequate to protect members and representatives of trade unions from unfair dismissal

It is Fórsa's view that Ireland's protections, including Codes of Practice, are not adequate in protecting members and representatives of trade unions from unfair dismissal. Unfair dismissal for engaging in trade union activity is dealt with in the Unfair Dismissals Acts 1997-2015 and is only protected against for trade union activity that takes place outside of contracted working hours. There is no protection for workers engaging in trade union activity during working hours that has not been previously permitted by the employer, likewise, there is no right for employees to engage in trade union activity during work hours.

Fórsa recommends that new legislation be introduced to extend protections for workers engaging in trade union activity to include during working hours, thereby providing an automatic protection against dismissal for trade union activity. Furthermore, it is Fórsa's position that re-instatement is prioritised as the appropriate address in the first instance, followed by re-engagement, as unfortunately, redress tends to focus on payment for compensation, and this has a negative impact on the individual and the trade union activity in general within the workplace. Currently, the required compensation employers are obliged to pay where an employee has been unfairly dismissed is not strong enough to act as a deterrent for dismissing employees unlawfully. The maximum penalty in cases where the employee has incurred a financial loss attributed to the dismissal is 104 weeks remuneration, and where the employee has incurred no financial loss, is four weeks remuneration.[14] Fórsa recommends that new legislation removes the consideration of incurring a financial loss, as it lessens the penalty and provides a loophole for the employer to pay a discounted penalty. It also discourages individuals from seeking alternative work as they wait for their case to be resolved, and penalises them for finding alternative employment for those who need to seek alternative employment for their own financial security. Fórsa is seeking that new legislation significantly increases financial penalties for employers in breach of the law in order to adequately protect workers against unfair dismissal for trade union activity. Penalties for

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[14] Dismissal - Workplace Relations Commission

employers in breach of employment law must be effective, proportionate and dissuasive, however, at present they are not burdensome enough nor do they dissuade employers from dismissing employees. A combination of prioritising re-instatement and increasing penalties and compensation will help increase protections from unfair dismissal.

The lack of protection for trade union activity in the workplace does not support collective bargaining, instead, it acts as a barrier to union organising and bargaining. Strengthened protections for members and representatives of trade unions against dismissal would better facilitate the promotion of collective bargaining and trade union membership across the Irish labour market.

Views on whether Ireland's protections, including Codes of Practice, adequate to protect members and representatives of trade unions from discrimination due to their membership, or activities on behalf of, of a trade union

There is no legislation that protects workers and trade union representatives against acts of discrimination on the grounds that they participate or wish to participate in collective bargaining. Workers are protected from discrimination under the Employment Equality Acts 1998-2015 against discrimination on the basis of nine protected grounds. Membership of a trade union (or activities on behalf of a trade union) are not included in the protected grounds for discrimination; therefore, employers cannot be held properly accountable for victimisation or discrimination based on trade union membership or activity.

Fórsa recommends that employment equality legislation be amended to include membership of a trade union, or engaging in trade union activity, as a protected ground from discrimination. This should extend to protection against discrimination for any worker on the grounds that they participate or wish to participate in collective bargaining. Similar to strengthened protections against unfair dismissal, harsher punishments are required for employers who discriminate against members and representatives of trade unions.

Examples of victimisation of workers and trade union representatives are identified in the 2024 report by Dr. Michelle O'Sullivan and Dr. Caroline Murphy 'Trade Union Access to Workers – Barriers faced by representatives in Ireland within a comparative European context.'[15] The lack of strong protections mean that workers have a valid and justified fear of victimisation and reprisal from their employers, which acts as a deterrent to union organising or collective bargaining activities. The absence of strong protections contradicts what the Adequate Minimum Wages Directive aims to achieve, in that its objective is to support collective bargaining across workplaces. O'Sullivan and Murphy (2024) highlight some of the experiences of trade union officials, which included:

- employers instilling fear among trade union members;
- excessive monitoring of employee communications;
- threatening closures or relocations;

[15] O'Sullivan and Murphy, (July 2024), *Trade Union Access to Workers – Barriers faced by representatives in Ireland within a comparative European context*.

- demonstrating ideological opposition to trade unions;
- including briefing workers against unions;
- distributing anti-union literature, and;
- establishing alternative structures to trade unions such as staff councils or committees.

The same report highlighted several concerns and fears expressed by workers regarding potential retaliation from their employer in response to their union organising or collective bargaining activities. These concerns included constructive dismissals, where an employer is aware that they are likely to lose an unfair dismissal claim before the Workplace Relations Commission (WRC) but proceeds with the dismissal regardless because the compensation they would be ordered to pay is insufficient to act as a deterrent. Other examples of retaliation include:

- sham redundancy processes;
- isolation of trade union members;
- poor performance ratings;
- control over working hours, shift/location changes, flexible and remote work, and annual leave;
- demotion or limiting promotional opportunities;
- using non-disclosure agreements to prevent workers from discussing employment contracts and arrangements;
- and the use of bogus self-employment contracts.

In addition, migrant workers have a unique fear and vulnerability, as their immigration status may be exploited with regards to the sponsoring of work visas or provision of work accommodation.

In any strengthening of employee protections from discrimination for trade union membership or activities, it is paramount that protections extend beyond the hiring of employees and dismissal, and protect against discriminatory acts during employment, in particular site or team transfers, downgrading of an employee's role and responsibilities, and other acts that are prejudicial to the employee. Where employers are found to have discriminated against a worker, the penalty must be burdensome enough to act as a strong deterrent from such acts in the first instance.

Views as to whether workers are sufficiently protected by law, including Codes of Practice, from acts of discrimination if they wish to organise or join a trade union

The International Labour Organisation (ILO)'s IRLEX legal database of industrial relations identifies no legal arrangements in Ireland concerning the right to 'establish or join a trade union'. Workers are insufficiently protected by law; therefore, the Government must introduce legislation giving workers the right to establish and join trade unions, alongside rights that protect workers engaging in trade union activity, including organising in the workplace, from discrimination and victimisation.

Views as to whether employers are sufficiently protected in Irish legislation against acts of interference where they wish to participate in collective bargaining

Fórsa has no evidence of acts of interference to prevent employers from engaging in collective bargaining by unions.

Evidence demonstrates that the imbalance of power rests with the employer, and barriers to collective bargaining occur when employers choose not to engage with trade unions and prevent unions from accessing workers and union members in the workplace. However, employers may actively interfere in collective bargaining within their supply chains and other contractual relationships where work is contracted out to another entity. The parent employer/contractor may interfere and attempt to dissuade from participating in collective bargaining where the parent employer/contractor is anti-union or does not want collective bargaining in place.

Legislation should protect and promote collective bargaining, and encourage collective bargaining with trade unions. In some cases, in smaller organisations where the parent employer/contractor recognises the union and engages in collective bargaining at their level, they encourage sub-contractors and other members of their supply chain to participate.

Fórsa has members across many semi-state organisations and private sector organisations where members and non-members have requested to meet with the union at their workplace location, but Fórsa has been denied access, therefore interfering with the union, its members and employees attempts to organise and engage in collective bargaining activities.

See Appendix: Case: Land Development Agency and Fórsa (2023 – present).

Views as to whether a statutory entitlement should be introduced to allow for trade union access to the workplace, or activities within the workplace, for the purposes of the promotion of collective bargaining even in the case that an employer has not given permission for such activities in the workplace

Trade union access to the workplace and workers is integral to the work of trade unions and their proper functioning, including recruitment of employees as new members, bargaining activities, organising, and communicating with members and potential members about the benefits of union membership, as well as discussing workplace matters. Establishing a right of access for trade unions to workplaces is essential if Ireland is to fulfil the aims and objectives of the Adequate Minimum Wages directive and promote collective bargaining. Collective bargaining is a key activity of trade unions, and crucial to supporting that activity is the ability to meet with members and potential members at their place of work.

Ireland is an outlier in that trade unions have no right of access, even with criteria to be met in order to gain access. This is another example where an employer veto acts as a blockade to union organisation. There are many examples across the EU and internationally where unions have a statutory right to access workplaces, including Belgium, Bulgaria, Denmark, Finland, Hungary, Italy, Slovakia, Spain, Sweden and New Zealand and Australia. Fórsa recommends establishing a statutory right of access and strongly puts forward that this access should be for all workplace locations, rosters and shifts, and include both physical and digital access. Without introducing new legislation, employers will continue to be able to block trade unions from meeting with their members and potential members, effectively interfering with the proper functioning of trade unions and obstructing efforts to increase collective bargaining coverage across employments. Furthermore, suitable facilities should be provided for trade unions and their members to meet on-site in appropriate locations, such as lunchrooms, and meetings should be facilitated during paid work hours, with no loss of pay for attendance.

See Appendix: Land Development Agency and Fórsa (2023 – present).

Views on what measures could be introduced which would promote employer engagement in collective bargaining

There are several measures which could be introduced to promote and incentivise employers to engage in collective bargaining. Historically, employers have, in general, not demonstrated an enthusiasm for engaging in collective bargaining arrangements. In this context, employers should be incentivised to engage in collective bargaining in some instances, while in other instances, obliged to engage in collective bargaining. We refer to the consensus reached by the social partners in the Labour Employer Economic Forum that obligations to engage in collective bargaining negotiations, and do so in good faith, do not contradict the fact that employers and employee representatives are not obliged to reach an agreement.

Conditionality and collective bargaining

Fórsa is strongly of the view that it is inconsistent for the State to express a commitment to promote collective bargaining while simultaneously providing public funding to organisations that refuse to recognise unions and/or undermine or obstruct such efforts to engage in good faith processes to achieve union-negotiated collective agreements.

Fórsa recommends the introduction of clear criteria and conditionality for the receipt of grants, funding awards, and other forms of state financial support. Organisations in receipt of taxpayers' money should be required to demonstrate compliance with the objectives of the EU Adequate Minimum Wages Directive, particularly with regards to respecting collective bargaining. This should be built into the application process and written into contractual arrangements.

In effect, this means that employers bidding for, or in receipt of public funds, must recognise trade unions for collective bargaining purposes, engage in good faith when such engagement is initiated and have a union-negotiated collective agreement in place in order to receive public funds.

Such a policy measure would not only prevent organisations from engaging in anti-union tactics but also serve as a proactive measure to promote collective bargaining through incentive. Linking access to public funding with the right to collectively bargain for workers would promote good faith engagement at enterprise level, a key objective of the directive.

To ensure compliance and accountability, and to prevent organisations from reneging on conditionality after receipt of public funding, Fórsa further recommends that a claw-back guarantee be included in the terms and conditions attached to receiving public funding. This would allow the State to reclaim funds from organisations found to be in breach of these obligations after receiving financial support.

In line with our recommendation for conditionality for grants and financial supports, Fórsa recommends conditionality be attached to public procurement to promote collective bargaining.

It is our position that organisations that do not recognise trade unions for collective bargaining purposes or interfere with collective bargaining activities should not be in receipt of public or state contracts. Whereby organisations are already providing services that would otherwise be provided by the state, for example, state-sponsored organisations, an obligation should be placed on the employer to recognise trade unions for collective bargaining purposes, engage in good faith with the trade union and have a union-negotiated collective agreement in place.

Denmark and the Netherlands are European leaders in the deployment of such ‘social clauses’ in the public procurement process, making extensive use of public procurement to encourage private companies to sign up to collective agreements through building support for collective bargaining into state contracts.[16] Evidence shows that this collective bargaining conditionality for public procurement has reduced the extent to which privatisation and outsourcing of public services has contributed to a decline in collective bargaining.[17]

To prevent the exploitation of migrant workers, the government should also make work permits conditional on collective agreements. For example, to be eligible as an employer of a migrant worker, the wages paid must be similar to the level of collective agreements.

Tax credits for organisations that engage in collective bargaining

Fórsa recommends that the government consider the introduction of tax credits for employers who engage in collective bargaining. This would act as an incentive for those who are not already engaged in collective bargaining to choose to do so.

Media campaigns

Fórsa recommends that the government fund national campaigns promoting trade union membership and develop collective bargaining awareness campaigns.

Adequate resourcing of the WRC

Fórsa recommends that the government provide adequate resources to the Workplace Relations Commission in anticipation of an increased level of collective bargaining activity and the need to pro-actively promote and inform employers and employees of the necessary changes to union recognition and collective bargaining.

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[16] Fórsa (2021) Collective Benefit: Harnessing the power of representation for economic and social progress.

[17] Bjarke Refslund and Ole Henning Sørensen, ‘Islands in the Stream? The Challenges and Resilience of the Danish Industrial Relations Model in a
Liberalising World’ (2016) 47(5) Industrial Relations Journal 530, 535.

Appendix

These case examples are real industrial relations examples involving Fórsa and employers. They provide context as to why strengthened legal rights to collective bargaining and trade union membership and activity are required, particularly in the context of the EU Adequate Minimum Wages Directive and Ireland's commitment to increase collective bargaining coverage across the state.

Case: Ryanair and Fórsa (2017)

Fórsa and its members were engaged in a long campaign to secure union recognition from Ryanair. For decades, Ryanair refused to recognise trade unions, in Ireland and across its operations internationally.

The dispute was a very long and arduous process, which included several instances of industrial action and strike action, legal battles, and ultimately, a legal settlement, before Ryanair finally formally recognised the union in 2017.

The fight for union recognition took great resilience within the membership, as it was a highly contentious environment which began adversarial initially, but the members held firm in their efforts to be represented collectively through their union.

Following the formal recognition of the union, we have negotiated several collective labour agreements and continue to engage professionally through agreed processes.

This case shows the lengthy and costly battles workers, and their representatives must go through to not only secure collective labour agreements, but first, have their union recognised by their employer for the purposes of collective bargaining.

Workers should not be forced to take industrial action to have their union recognised. They should have a legal right to be represented by their union and to collectively bargain. Furthermore, the introduction of a mandatory process of engagement could prevent lengthy delays to negotiations, which proven through this case study, can add decades of delays to improvements for workers' pay and conditions of employment.

Case: Stobart Air and Fórsa (2019)

For many years, Stobart Air, operating in the Republic of Ireland, engaged directly with its staff on pay and working conditions, without the involvement of a trade union. A pay agreement was in place from 2016 to 2019, which had been negotiated through alternative internal structures within the airline, rather than through collective bargaining.

In 2018, negotiations commenced on a successor pay agreement, but staff felt the proposal put forward by their employer fell short of industry norms. Members then sought to have their union negotiate on their behalf. However, Stobart Air refused to recognise the union and wanted to continue internal process for staff engagement. The employers pay proposal was rejected by staff. Given the employer's refusal to engage with the union for collective bargaining purposes, Fórsa referred the dispute to the Workplace Relations Commission (WRC). The WRC invited the airline to talks, but they refused the offer.

The employees were left with no option but to consider industrial action. A ballot was conducted, and overwhelming 100% of members voted unanimously in favour of industrial action, with a strong turnout of 84%. Following this strong support for industrial action, Stobart Air agreed to discuss union recognition for its cabin crew, and the industrial action was withdrawn.

Similarly, pilot members in the Irish Airline Pilots Association, a branch of Fórsa, had to engage in a ballot for industrial action to force the employer to collectively bargain with the union on members' terms and conditions of employment.

This case highlights the lengths workers must go to have their union recognised for collective bargaining purposes, in the absence of a statutory right to collective bargaining. It demonstrates the need for strengthened collective bargaining rights and the introduction of a mandatory process of good faith engagement following initiation of engagement from the employees' trade union. It is also a reminder that internal staff groups do not replace trade union recognition or union engagement in collective bargaining. A formal collective bargaining process would allow for meaningful, constructive dialogue between the union and the employer, prevent disruption to services, and advance the aims of the EU Adequate Minimum Wages Directive with regards to increasing the collective bargaining coverage rate.

Case: Land Development Agency and Fórsa (2023 – present)

Fórsa represents members employed by the Land Development Agency (LDA), a commercial State-sponsored body created to coordinate public land for the provision of housing. Since 2023, Fórsa has been engaging with the employer, seeking the LDA to recognise Fórsa, to allow access to visit the workers, and to establish a framework for engagement with the employer.

The union, on many occasions, wrote to the LDA seeking permission to meet with management to make introductions and sought to meet with members at their work premises. The LDA declined the requests and said that they were unable to facilitate the requests to meet with members at the workplace. On several occasions, management has physically refused access for union officials to enter the building and meet with workers. Management continues to refuse the union access and refuse to recognise the union.

Despite several attempts and written requests to meet over months, the employer continued to deny access to workers for union officials and refused to meet with the union. After repeated attempts, the LDA suggested that the union contact them again in approximately four months and that the request to meet include a proposed agenda.

These delay tactics, refusals to meet, and refusals to provide access to members, are direct obstacles to the aims and objectives of the EU Adequate Minimum Wages Directive, which calls on Member States to promote collective bargaining. They also prevent trade unions from carrying out their proper functioning.

In February 2025, the CEO wrote to the union advising it engages directly with employees and did not want to recognise the union. The matter was referred to the Workplace Relations Commission for assistance, and following the referral the CEO agreed to meet directly. The meeting with the CEO occurred in March, and the union proposed a recognition and procedural agreement. This was refused by the employer, and they continue to obstruct the union from visiting the workplace. The LDA refuses to recognise the union, refuses access and refuses to engage in collective bargaining. The matter has been referred to the WRC.

This case highlights how employers can obstruct the processes involved in recognising the union, accessing the workforce, and agreeing mechanisms that promote collective bargaining. It also highlights the need for legislative measures to prevent employers from refusing to engage with trade unions and engaging in anti-union behaviour. In order to fulfil the objectives of the EU Directive, the government must introduce a mandatory process of engagement, legislate for the right to collectively bargain and trade union access to workers.

This case further highlights the need for policy change with regard to state bodies, public procurement and collective bargaining rights. The Land Development Agency is in receipt of public funds and continues to refuse to recognise a trade union. If conditionality was attached to state bodies and public procurement, requiring companies to recognise trade unions and respect collective bargaining, this fight for recognition can be avoided, and we may be able to avoid escalation to industrial action.

Case: Emerald Airlines and Fórsa (2023)

The Irish Airline Pilots' Association (IALPA) is the professional association which represents pilots within Ireland, and is a branch of Fórsa trade union. IALPA and Fórsa sought formal recognition from Emerald Airlines to represent pilots employed at Emerald Airlines for the purposes of negotiating a collective labour agreement. However, Emerald Airlines refused to engage with the union, despite continuing efforts over months. The employer stated they did not need to bargain with the union as it had established its own internal employee representative group who they engage with on pay. The airline's continued refusal to meet with the union left members with no choice but to serve notice of industrial action in response the failure to engage, the refusal to recognise the union and the refusal to negotiate on pay and conditions.

In response to the notice, Emerald Airlines threatened disciplinary action against pilots who participated in the industrial action, prompting the union to escalate the industrial action to strike action. Consequently, Emerald Airlines agreed to meet with the union, and signed a recognition agreement, before negotiating a collective labour agreement.

Emerald Airlines is also the airline publicly procured to operate the public service obligation Dublin to Donegal flight, which provides vital connectivity between the regions.[1]

This case highlights the need for policy change with regard to public procurement and collective bargaining rights. Emerald Airlines was in receipt of public money through a state contract and was still able to refuse to recognise a trade union. If conditionality was attached to public procurement, requiring companies awarded state contracts to recognise trade unions and respect collective bargaining, this fight for recognition, and escalated industrial action could have been avoided.

[1] Ministers Ryan and Naughton announce Emerald Airlines as the new operator on the Government funded Donegal – Dublin PSO air route