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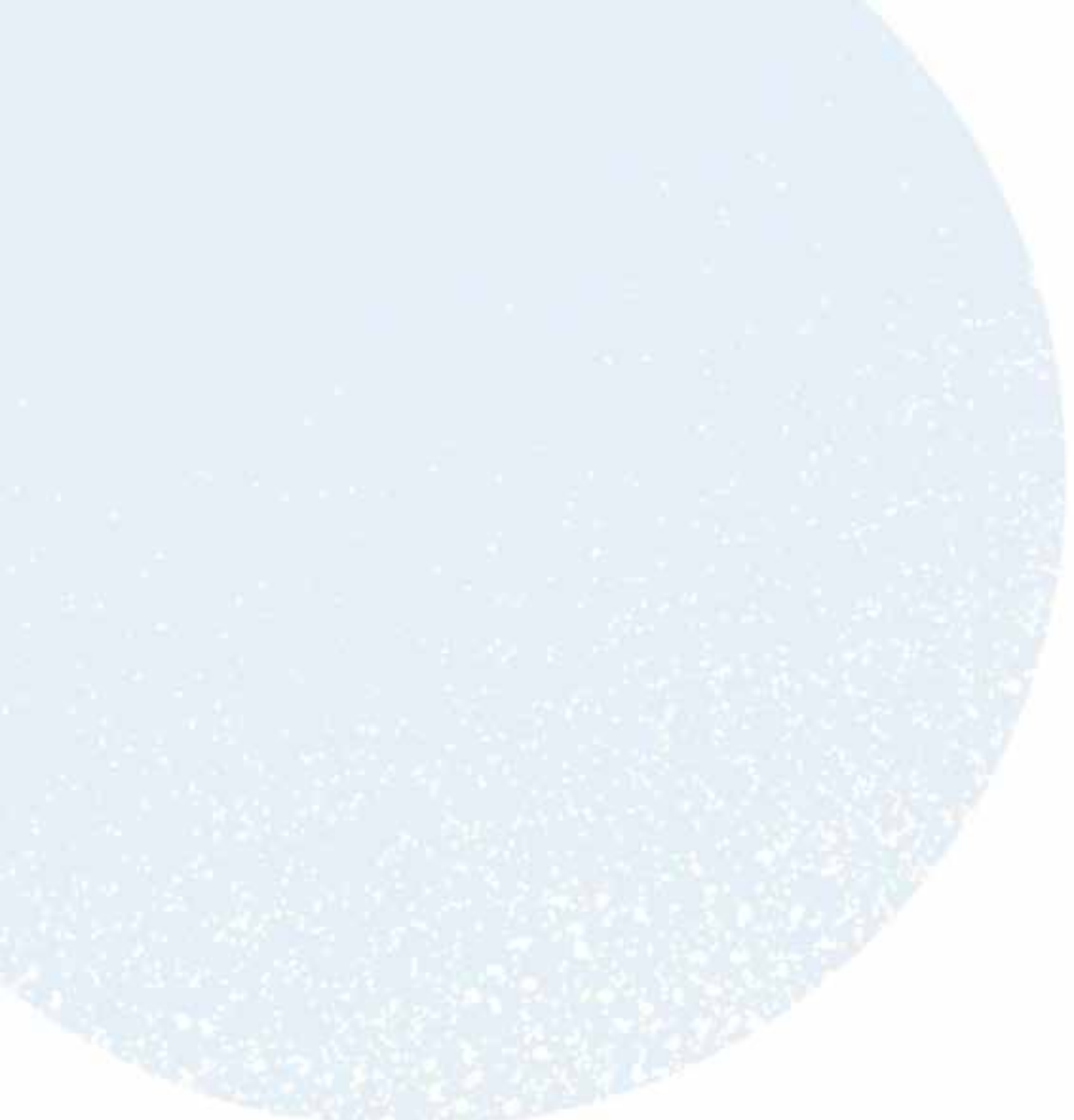
Irish Congress of Trade Unions

Promoting **Collective Bargaining**

Under the Adequate
Minimum Wages
Directive

Response to
Department of
Enterprise, Trade
and Employment
Public Consultation

May 2025



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Summary of Recommendations to Government

- Take account of all of Ireland's obligations to promote collective bargaining, not just under the obligation to establish an action plan but under all relevant provisions of the Directive.
- To ensure the effective involvement of the social partners in all measures to promote collective bargaining, make public the transposition package it was required to have notified to the European Commission by 15 November 2024.
- Give the social partners reasoned responses to their opinions on how to promote collective bargaining under Article 4 and all other relevant provisions of the Directive.
- Allocate funding under the National Training Fund Act 2000, for the provision of training on collective bargaining; from the European Social Fund+ and the EU Technical Support Instrument to strengthen the capacity of the social partners, in particular for organisation-related capacities
- Make public the correspondence between it and the European Commission services on Ireland's JLCs/EROs system
- Commission the ILO to review with Government and with the involvement of the social partners the building and strengthening of collective bargaining, in particular sectoral bargaining, in Ireland, in accordance with the ILO Conventions listed in Recital 24
- Ratify the Labour Relations (Public Services) Convention No 151 (1978) and the Collective Bargaining Convention No 154 (1981)
- Re-instate extension mechanisms for (sectoral) Registered Employment Agreements (REAs)
- Implement the recommendation from the Final Report of the LEEF High Level Working Group to de facto abolish the employers' veto without any further delay.
- Introduce a right for trade unions to access workplaces and workers and the provision of appropriate facilities for trade union activity at work.

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- Re-instate a scheme similar but more extensive to the one in place between 2001 and 2011 to provide tax relief for trade union subscriptions.
- Consider introducing a union-default pilot
- Uphold the right of trade union members to take collective action to defend their interests, including strike action
- Consider the introduction of the Ghent system.
- Extend conditionality for all state supports to employers to incentive and promote collective bargaining by employers and employers' organisations
- Include measures on public procurement in the action plan to promote collective bargaining
- Make work permits conditional on sectoral collective agreements
- Consider introducing a 'Chamber' system to promote collective bargaining by employers
- Provide appropriate resources for the WRC's conciliation service
- Introduce a mandatory process of engagement that provide space for real engagement, leading towards collective bargaining
- Ensure the social partners have equal access to the appropriate information necessary to engage in collective bargaining at all levels and across sectors.
- Improve the filing of company accounts with the CRO and make filings free of charge for unions
- Improve the provision of macro-economic and sectoral data by the CSO and other agencies
- Adopt appropriate legislation to protect the exercise of the right to collective bargaining and to protect workers and trade union representatives from discrimination in respect of their employment for taking part or wishing to take part in collective bargaining
- Adopt appropriate legislation to protect trade unions from interference by employers
- Ensure any legislation that purports to protect employers' organisations from interference by unions upholds the right to collective action

- Provide the framework of enabling conditions for collective bargaining in accordance with the process set down in Article 4(2)
- Establish the action plan to promote collective bargaining in accordance with the process set down in Article 4(2)
- Establish a three- (i.e. 2025-2028) or four -year (i.e. 2025-2028 but with a mid-term review) action plan that facilitates the social partners' involvement in Directive's evaluation due by late 2029.
- Ensure workers' effective access to the NMW by involving unions at all levels
- Improve compliance with minimum wages through public procurement, including by establishing a public register of collective bargaining processes
- Ensure the provision of the information on the rate and development of collective bargaining coverage in accordance with Article 10
- Adopt legislation to protect trade union representatives from victimisation in accordance with Article 12 and that enables unions to take class and collective actions on behalf of workers in cases of infringements of minimum wage rights
- Adopt legislation that provides for effective, proportionate and dissuasive penalties for breaches of minimum wage protection
- Use the transposition and implementation of the Directive's provisions that promote collective bargaining to ensure Ireland is well-positioned to meet its obligations to promote collective bargaining under other EU legislation.

Introductory Remarks

The Consultation in the Context of the Obligation to Promote Collective Bargaining

The Irish Congress of Trade Unions (ICTU) welcomes the opportunity to make a submission to the Department of Enterprise, Trade and Employment (DETE) public consultation entitled 'Action Plan Public Consultation'.

We would begin by setting the consultation in the context of Ireland's obligations under the Directive to promote collective bargaining.

First, DETE is consulting on just one, albeit a very important, provision of Article 4(2) – the obligation to establish an action plan. Some of the questions posed relate to some aspects of the provisions of Article 4(1)(a) (b),(c) and (d) and others relate to recommendations from the 2022 Final Report of the LEEF High Level Working Group.

The Directive's concept of a 'strong and well-functioning collective

bargaining' (Recital 22) is collective bargaining coverage of at least 80%.¹ As Ireland's rate is considerably below this rate, Ireland's current collective bargaining system cannot be considered 'well-functioning' in the sense of the Directive. Ireland therefore has obligations under Article 4(1) and, 'in addition', under Article 4(2).

Article 4(1) set down general rules that apply to all Member States with the aim of increasing collective bargaining coverage and to facilitate the exercise of the right to collective bargaining on wage-setting.² Article 4(2) set down additional obligations for those Member States with coverage below 80%,³ namely to provide a framework of enabling conditions for collective bargaining and to establish an action plan to promote collective bargaining, setting out a clear timeline and concrete measures to progressively increase coverage.

The European Commission services have explained that the obligations under Article 4(2) should be seen as complementary

1 Lo Faro, Antonio, in Ratti, Luca, Brameshuber, Elisabeth, and Pietrogiovanni, Vincenzo (2024), *The EU Directive on Adequate Minimum Wages: Chapter 13, Promotion of Collective Bargaining on Wage-Setting (Article 4)*, 189-190.

2 The European Commission's 2020 proposal for the Directive only set the aim of increasing coverage. Facilitating the exercise of the right to collective bargaining on wage-setting was added by the EU legislature. The Directive was formally adopted by the European Parliament on 14 September 2022, with 12 of Ireland's 13 MEPs voting in favour, and by the Council on 4 October 2022, with the Minister for Finance voting in favour on behalf of the Government.

3 Lo Faro, (2024), p.187.

to Article 4(1), with the obligation to provide a framework of enabling conditions for collective bargaining establishing the 'overall regulatory framework more in line with the elements included in Article 4(1))' and the obligation to establish an action plan including 'more concrete measures with a specific timeline.'⁴

By contrast, the Government has appeared to downplay and conflate Ireland's obligations to promote collective bargaining, which is an 'all-encompassing purpose of the entire Directive...'⁵. It has said that, '*Transposition of the Directive would result in the creation of an action plan setting out how the collective bargaining coverage rate can be increased*'⁶, and that it would 'publish an Action Plan on *enabling conditions* for collective bargaining by the end of 2025 as required by the Directive',⁷ The only reference in the new Programme for Government is a commitment to: '*Publish an Action Plan for collective bargaining in 2025 in line with our commitments under the EU Directive*'.⁸

ICTU's responses to this consultation will therefore make recommendations to Government, as the Directive is addressed to the Member States (Article 19), to **take account of all of Ireland's obligations to promote collective bargaining, not just under the obligation to establish an action plan but under all relevant provisions of the Directive.**

The Government has appeared to downplay and conflate Ireland's obligations to promote collective bargaining

Second, before the transposition deadline, the Government said its legal advice (which, like all such advice, has not been made public⁹) was that '*no new legislation is required for transposition of the collective bargaining elements of the Directive, [but] legislation may separately be considered as part of Ireland's action plan*'.¹⁰ Since the passing of the transposition deadline, DETE has said that 'no

4 European Commission (2023) Report Expert Group – Transposition of Directive (EU) 2022/2041 on adequate minimum wages in the European Union, p.26. All subsequent references to 'European Commission services' should be taken as references to their views as set out in this report.

5 Lo Faro, (2024), p.186.

6 DETE (2022), Information Note to the Seanad on the Adequate Minimum Wages Directive. This was made public in early 2024.

7 Government of Ireland (October 2024), Medium-Term Fiscal and Structural Plan, p.26

8 Programme for Government (January 2025), Securing Ireland's Future p.17.

9 It is worth noting that the Council's 2021 legal opinion on the compliance of the proposal for the Directive with the subsidiarity principle was made public.

10 Written answers to Dáil written questions no.43536/24 and no.43578/24 (24 October 2024).

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legislative changes [were needed] on the collective bargaining and enforcement side because (1) the relevant provisions of the Directive are *already being given effect* and (2) the formulation of the action plan to promote collective bargaining does not need a legislative underpinning'.¹¹

It is not disputed that the action plan does not need a legislative underpinning since, as the European Commission services have clarified, the establishment of the action plan is part of the *implementation*, not the transposition, of the Directive.

However, the European Commission services pointed out, with respect to Article 17, that the Court of Justice of the European Union (CJEU) has held that Member States are 'required to state, for each provision of the directive, the national provision or provisions ensuring its transposition', and that:

'...notification, to which a correlation table may be added, must indicate unequivocally the laws, regulations and administrative provisions by means of which the Member State considers that it has

satisfied the various requirements imposed on it by that directive. In the absence of such information, the Commission is not in a position to ascertain whether the Member State has genuinely implemented the directive in full'.

With specific regard to Article 4(1), the European Commission services also made clear that all Member States would need to present a 'package of measures showing how they comply with Article 4(1) by the transposition deadline'. Any existing measures that are already compliant with the Directive do not have to be 'republished with a reference' to the Directive but 'should be included in a clear manner in the correlation table or equivalent within the transposition package.'

However, the only transposition provisions communicated by Ireland to the European Commission (and accordingly listed by the European Commission on the EUR-Lex service) are the European Union (Adequate Minimum Wages Regulations) 2024 (Statutory Instrument No.633/2024). These were signed into law on 15 November 2024 and concern

11 DETE (January 2025) Ministerial Brief, p.50

provisions with implications for the Low Pay Commission.¹²

If it is the case that the 'relevant [collective bargaining] provisions' are 'already being given effect', we presume these were included 'in a clear manner in the correlation table or equivalent with the transposition package' by 15 November 2024, in accordance with Article 17.

The Government is obliged not just to notify Ireland's forthcoming Action Plan to the European Commission but also to make it publicly available (Article 4(2)). **To assist in the involvement of the social partners in all Article 4 measures, the Government should make public the transposition package it was required to notify to the European Commission by 15 November 2024.**

It is difficult if not impossible to reconcile the claims that the relevant collective bargaining provisions are 'already being given effect' and that no new legislation is required to transpose the Directive's collective bargaining provisions

with considered assessments of Ireland's collective bargaining legal framework by European and international organisations, statutory bodies with expertise in this field, and Irish legal experts.

For example, the European Commission has identified Ireland as a country where collective bargaining coverage has 'significantly declined' over recent decades.¹³ Eurofound classifies Ireland as having a 'market-orientated' industrial relations governance system with a 'very low performance in industrial democracy and uncoordinated and decentralised collective bargaining systems'.¹⁴ The OECD considers Ireland as having a 'largely decentralised collective bargaining systems', where collective bargaining predominantly takes place at firm or enterprise level and says this is in contrast to most continental Western European countries where sector or industry level bargaining continues to predominate.¹⁵

12 The Government had previously said its legal advice on the minimum wage elements of the Directive was that Ireland's current minimum wage setting framework, namely the Low Pay Commission, was 'largely already in compliance with the provisions of the Directive' and 'limited changes are required to ensure the transposition of these elements of the Directive.' (Written answer to Dáil written question no.30098/24, 11 July 2024). The social partners were not consulted beforehand, as required by Article 7. The Government was also obliged to consult and involve the social partners in respect of Article 8. This also has not been done.

13 European Commission (October 2020), *Impact Assessment*, p.155

14 Eurofound (2023), *Measuring key dimensions of industrial relations and industrial democracy* (2023 update), Publications Office of the European Union, Luxembourg, p.2

15 OECD (2019), *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, pages 112 and 55. Other countries with predominantly enterprise or firm level bargaining are the UK, most Central and Eastern European countries, Turkey, the US, Canada, New Zealand, Chile, Japan, Korea, Mexico.

Domestically, the Irish Human Rights and Equality Commission (IHREC) points out that Ireland has failed to introduce strong legislative protection for collective bargaining and union recognition and that employees have no right to make representations to their employer through their union,¹⁶ and has recommended that the State take 'immediate action to address the ongoing absence of a statutory right to collective bargaining and the imbalance of power in the labour market in Ireland.'¹⁷ The National Economic and Social Council (NESC) secretariat paper for the 2021-2022 LEEF High Level Working Group says Ireland provides 'notably weak legal protection for collective bargaining and collective worker representation.'¹⁸ The ESRI says there is no legislative right for trade unions to be recognised in the workplace for the purposes of collective bargaining.¹⁹ The report of the Commission on Taxation and Welfare grouped Ireland with the UK as having an Anglo-Saxon social and labour market

model with 'weak labour market institutions, collective bargaining rights and infrastructure, wide earnings dispersion and high incidence of low pay'.²⁰

These views are also shared by legal experts. Michael Doherty, former chair of the LEEF High Level Working Group, says 'legal supports for collective bargaining are largely absent' in Ireland, that 'Ireland provides notably weak legal protection for collective bargaining and for collective worker representation in general', that employees 'cannot insist that their employer negotiate with any union regarding their pay and conditions', and that trade unions 'rely, for power and influence, on membership and density levels.'²¹ Bell and Eustace say the Constitution gives 'only very qualified protection to the right to freedom of association, which includes collective bargaining', that employers are not obliged to recognise or bargain with any union,²² that Ireland's system of industrial relations is weak by the standards of comparable EU Member.²³

16 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.

17 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).

18 Thomas, Damien (2022), *An Opportunity to Review and Reframe Collective Bargaining and the Industrial Relations Regime*, p.8

19 James Laurence, James, Kelly, Eilish, McGinnity, Frances, Curristan, Sarah (2023), *Wages and Working Conditions of Non-Irish Nationals in Ireland*, ESRI, p.10.

20 Commission on Welfare and Taxation (2022), *Foundations for the Future – Report of the Commission on Taxation and Welfare*, p.228

21 Doherty, Michael (2024), *'Make me good...just not yet? The (potential) impact of the Adequate Minimum Wage Directive*, pages 212-214.

22 Bell, Mark and Eustace, Alan (2024), Ireland, in Ratti et al (2024), p.480.

23 Bell, Mark and Eustace, Alan (2024), Ireland in Ratti et al (2024), p.489.

The Obligation to Involve the Social Partners

Second, the Government is obliged under Article 4 not just to consult but to *involve* the social partners, in accordance with national law and practice.²⁴ This encompasses all of the obligations under Article 4(1)(a) (b)(c) and (d).

The European Commission services clarified that the involvement of the social partners is 'a key aspect' of the package of measures 'showing how they comply with Article 4(1)' that all Member States were obliged to have presented to the European Commission by 15 November 2024.

In this context, it is worth noting with respect to the obligation to involve the social partners under Article 7 (Involvement of the social partners in setting and updating statutory minimum wages) that the European Commission services have cited Recital 26, which it said 'precisely states' that giving the social partners the possibility to provide opinions and to receive a *reasoned response* prior to the presentation of proposals and before any decisions are taken could contribute to the proper involvement of the social partners.

Since Article 4(1) also stipulates the involvement of the social partners, **there seems no obvious reason why the social partners should not also be given a reasoned response to their opinions on how to promote collective bargaining under Article 4 and other relevant provisions of the Directive.** The Government is entitled to seek 'observations from 'interested stakeholders across the wider enterprise and employment sectors',²⁵ but this should be done in accordance with the Directive's obligations to involve both social partners and to take measures to promote collective bargaining.²⁶

Provide State Support for Collective Bargaining and Encourage Sectoral Bargaining

While no member state bound by Article 4(2) is obliged to attain the 80% threshold²⁷, until it does so it will continue to be required to provide for a framework of enabling conditions for collective bargaining and to establish an action plan promoting collective bargaining. It is reasonable to conclude that those Member

24 The European Commission's proposal for Article 4(1) referred to taking measures in *consultation* with the social partners but this was strengthened to with the *involvement* of the social partners by the EU legislature.

25 Minister of State at DETE, Seanad debate, 5 November 2024

26 It should be noted that neither BusinessEurope nor SMEUnited, which represent IBEC and ISME respectively at EU level, intervened on Article 4 at any stage during the meetings of the European Commission's expert group from March to November 2023 according to the expert group report.

27 The European Parliament's May 2023 resolution '*Roadmap on a Social Europe: two years after Porto*' calls on all Member States to reach 'at least 80% coverage by 2030'. All Irish MEPs voted in favour.

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States' obligations are not properly fulfilled until the threshold is attained.²⁸

The example of other Member States shows that collective bargaining coverage of 80% or more depends on two principal factors: a) a system of adequate state support for collective bargaining; and b) sectoral collective bargaining as the predominant level of collective bargaining.²⁹

To reach 80% coverage, it is likely Ireland will have to take similar measures, as is (partly) acknowledged by the Final Report of the LEEF High Level Working Group.³⁰

ICTU's response will therefore focus on introducing state support for collective bargaining and on encouraging and supporting sectoral bargaining to ensure Ireland complies with its obligations.

Lastly, the Government has also said that it has been engaging through Ireland's Permanent Representation to the EU with other Member States to 'share best practice with regard to the development of the action plans and the transposition of the Directive'.³¹ Our response therefore draws on best practice on the promotion of collective bargaining in other Member States, and also in other countries with broadly similar 'national law and practice' as Ireland's.

28 Lo Faro (2024), p.190

29 Müller and Schulten (2024), p.76

30 'It seems clear that any action plan agreed to facilitate collective bargaining, and support an increase in bargaining coverage, would need to encourage and support bargaining at sectoral level' (p.6)

31 Written answer to Dáil written question 30130/24, 11 July 2024

Responses to Question under Article 4(1)(a) Heading

Q1. Views in relation to training or other capacity building activities which would assist the social partners to engage in collective bargaining?

At the outset to responses to all the questions posed under Article 4(1), it must be reiterated that the aim of Article 4(1) is to increase the collective bargaining coverage rate and to facilitate the exercise of the right to collective bargaining on wage-setting.

With specific regard to the questions posed under the Article 4(1)(a) heading, it must also be reiterated that this obliges all Member States to 'promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, in particular at sector or cross-industry level'.

ICTU considers that the emphasis on training in the question suggests a very narrow concept of capacity-building. By contrast, the European Commission's 2020 Impact Assessment accompanying its proposal for the Directive cited Eurofound work³² to distinguish between *organisation*-orientated

capacities and *process*-orientated capacities.³³

Organisation-orientated capacities are measures that enhance the capacity to set up, maintain or expand membership; to organise and protect current and potential members; to provide training, counselling, information and communication; to diversify services; to adapt organisational structures and work practices according to changing labour markets, globalisation and their impact on industrial relations; and to obtain or maintain appropriate equipment. Process-orientated capacities are measures that set up structures for social dialogue; effectively engage in collective bargaining, social dialogue and dispute resolution; (co)regulate the employment relationship; mobilise members for industrial action; participate in policymaking at different levels; participate in international cooperation and interregional/cross-border activities; and engage in advocacy. The 2023 Council Recommendation on strengthening social dialogue also makes a broadly similar distinction, saying that capacity-building activities typically help

32 Eurofound (2019), *Capacity building for effective social dialogue in the European Union*, Table 1, p.11.

33 European Commission (2020), *Impact Assessment*, (SWD(2020) 245 final) pages 214-215.

social partners to 'improve the size of their membership base' and to 'support their organisational development', and to 'promote their process-oriented capacities'.³⁴

The European Commission services have said that measures aimed at building and strengthening capacity 'may take various forms, including financial or non-financial means, and do not necessarily have to be set by law'. ICTU takes this to mean that while such measures do not necessarily have to be set by law, they expect most to be set by law.

Use State and EU Funds to Build and Strengthen Capacity to Engage in Collective Bargaining

With regard to the first part of the question posed under the Article 4(1)(a) heading, supporting training is obviously one measure that would promote the building and strengthening of the social partners to engage in collective bargaining. The Final Report of the LEEF High Level Working Group stated that, 'constructive and efficient collective bargaining processes require support for those, on all sides, engaging in such processes'. **It recommended, in particular, the**

allocation of funding under the National Training Fund Act 2000, which can be accessed by trade unions and employers, adding that the provision of training 'in the practice of collective bargaining will not only increase the efficiency and effectiveness of the process but may encourage greater take-up of collective bargaining opportunities'.³⁵

This recommendation should be implemented without any further delay. The State should use the National Training Fund to organise, with the involvement of the social partners, a comprehensive national training course for collective bargaining practitioners, with the aim of promoting collective bargaining, improving negotiation skills, achieving better industrial relations outcomes for all parties and increasing collective bargaining coverage. This training would be provided to unions and employers that take part or wish to take part in collective bargaining. This would help contribute to Ireland fulfilling its obligation under Article 4(1)(a).

With regard to the Directive, Recital 40 points out that in accordance with the 2021 Regulation

34 C/2023/1389. This Recommendation was adopted by the Council on 12 June 2023, with the Minister for Children, Equality, Disability, Integration and Youth representing the Government. It defines social dialogue as between or among governments, employers and workers and as 'including collective bargaining' between employers and unions, and differentiates it from dialogue involving a 'broader set of stakeholders'. All Member States are asked to send to the European Commission by 7 December 2025 the list of measures, drawn up in consultation with social partners, 'which are taken or have already been taken to implement this Recommendation'. The Council's advisory Employment Committee 2025/26 work programme indicates the first review of implementation will be in 2026.

35 Final Report of the LEEF High Level Working Group (October 2022), page 24.

establishing the European Social Fund+ over 2021-2027,³⁶ Member States are to allocate an appropriate amount to the capacity building of the social partners and of civil society organisations. This provision is acknowledged by the expert group report. The ESF+ regulation stipulates such an allocation is to include 'training, networking measures, and strengthening of the social dialogue, and to activities jointly undertaken by the social partners'.

Ireland however is one of just two of the 20 Member States³⁷ bound by Article 4(2) that has not made any such allocation from its 2021-2027 ESF+ funding of just under €1.1 billion.³⁸ Furthermore, three of the seven Member States that are not bound by Article 4(2) have nonetheless allocated such funding (France, Italy and Finland). The allocations made by member states that are supporting social partners' capacity-building range from 0.1%

to 1.4% of their total funding, with nine allocating approximately 0.6%. A 0.6% allocation by Ireland of its total ESF+ budget over 2021-2027 would amount to approximately €6.5 million. More recently, the European Parliament has underlined the importance of collective bargaining and social dialogue and has called on the European Commission to allocate 'consistent, adequate and sufficient financial resources to capacity-building' with an 'appropriate minimum obligation in all Member States' to empower the social partners.³⁹

The Council Recommendation also includes a recommendation that all Member States support national social partners, at their request, to participate effectively in social dialogue, including in collective bargaining by, inter alia, making 'best use' of support under ESF+ and the Technical Support Instrument (recommendation 10(i)).⁴⁰

36 Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013 (OJ L 231, 30.6.2021, p. 21). Article 9(2) stipulates that Member States 'shall' allocate an appropriate amount. It also includes similar provisions with respect to civil society organisations. This also has not been done.

37 European Commission, DG EMPL, unit G1 ESF+ (2023), *Capacity building Allocation of ESF+ for capacity building of social partners and civil society organisations*. The Netherlands is the other. ICTU understands the Dutch Government has disputed the OECD's estimate of a coverage rate of 76% (2019) for the Netherlands.

38 Government of Ireland (22 March 2023), *'1 billion for employment skills and social inclusion'*, The total budget is €1,081m with €508 million in EU funding and €573m in Irish co-financing.

39 EP resolution (11 March 2025), *European Social Fund Plus post-2027*, para. 37. All Irish MEPs voted in favour.

40 The Technical Support Instrument was established by Regulation (EU) 2021/240) to provide technical expertise, which can be 100% financed by the EU, to design and implement reforms. Its scope encompasses social dialogue (Article 5(d) and capacity-building actions that 'contribute to the empowerment' of the social partners are eligible actions for technical support (Article 8). The Government has utilised the TSI for the 2021 report *Supporting Excellence: Capital Project and Programme Delivery Capability Review* for the Department of Public Expenditure and Reform; the *Health and Social Care Workforce Planning Strategy and Workforce Planning Projection Model*; and the 2024 National Council for Special Education paper *An Inclusive education for an Inclusive society*, amongst others.

Funding should be allocated therefore under the ESF+ Regulation and under the Technical Support Instrument for social partners' capacity-building in accordance with the ESF+ Regulation.⁴¹

Funding should not be limited to training, or (only) for those 'engaging in such processes', or only on 'joint proposals' from the social partners, as previously requested by DETE. **ESF+ funding should be available for a range of organisation-related capacities** identified by the European Commission, Eurofound and the Council Recommendation. The European Commission has pointed out for example that ESF+ funding for social partners' capacity-building is being used to support the hiring of permanent and extra staff on collective bargaining, training staff and members, socio-economic analysis, ad hoc research, study projects on socio-economic issues, study visits, events, and on the 'capacity to increase supply or update of trainings by members or member organisations'.⁴²

In this regard, the Council Recommendation recognises and emphasises the existence of 'strong, independent trade unions and employers' organisations

as an enabling condition for well-functioning' collective bargaining, says capacity-building activities are primarily a 'bottom-up process, dependent on the will and efforts of the social partners themselves who are best placed to identify their needs and indicate the measures they are already taking to strengthen their capacities'. It recommends that Member States take actions 'encouraging and, where appropriate, supporting social partners to put forward initiatives and develop new and innovative approaches and strategies to increase their representativeness and membership bases (recommendation 10(d)). And it emphasises that it 'cannot, under any circumstances, be cited to justify reducing the level of support already afforded to social dialogue, including collective bargaining, within Member States' (paragraph 27).

National and EU funding such as the National Training Fund, the ESF+ and the Technical Support Instrument should be used to build and strengthen the capacity of the social partners to engage in collective bargaining, including to support trade unions to engage in organising campaigns and initiatives and for the recruitment and training of union personnel

41 ICTU equally advocates and supports the allocation of ESF+ funding for civil society's capacity-building.

42 European Commission, DG EMPL, unit G1 ESF+ (2023), *Capacity building Allocation of ESF+ for capacity building of social partners and civil society organisations*

to carry out organising, and replicating as appropriate the range of such capacity-building measures currently being implemented in other Member States.

Promote Sectoral Collective Bargaining

In response to the second part of the question under the Article 4(1)(a) heading regarding 'other capacity building activities that would assist the social partners to engage in collective bargaining', it is important to acknowledge the emphasis in Article 4(1)(a) on collective bargaining at sector or cross-industry level.⁴³ Similarly, Recital 16 describes sectoral and cross-industry level collective bargaining as an 'essential factor' that needs to be promoted and strengthened and the European Commission services have said that Article 4 needs to be read together with Recital 16.

It is clear that promoting collective bargaining, and in particular sectoral or cross-industry bargaining, is a core aim of Article 4(1)(a). All Member States with a collective bargaining coverage of 80 per cent and more have sectoral bargaining as the dominant level of bargaining, whereas all countries with coverage below 50 per cent or

less are characterised by the dominance of company-level bargaining.⁴⁴

As noted above, the importance of sectoral bargaining is (partly) acknowledged in the Final Report of the LEEF High Level Working Group.⁴⁵ It goes on to say that a 'key legislative mechanism for supporting sectoral collective bargaining already exists in the form of the legislation establishing Joint Labour Committees (JLCs) and that 'properly functioning JLCs can be an effective, evolving, and flexible system of sectoral regulation.'⁴⁶ The Final Report's recommendation to de facto abolish the employers' veto by establishing a process for proceeding with an employment regulation order in the event that employers, in accordance with fair procedures, are given all reasonable opportunity to engage *but decline to do so*, should be implemented without any further delay.

It should be noted that in response a query and information provided by Ireland's representatives at the European Commission's expert group in 2023, the European Commission services said that Ireland's system of sectoral regulation, 'approved

43 'cross-industry' refers to more than one sector according to the European Commission services.

44 Müller and Schulten (2024), p.76

45 Final Report of the LEEF High Level Working Group, p.6

46 Final Report of the LEEF High Level Working Group, p.7

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by the government on the basis of a proposal from joint labour committees or a labour court', are not collective agreements in the sense of Article 3(4).⁴⁷ More recently however, ICTU has been formally advised by the Government that it has engaged further with the European Commission services on this matter and that the European Commission services now say that this system may be considered with respect to the obligation to promote collective bargaining. This presumably would also mean EROs (and SEOs also) could be included in the report on the rate and development of collective bargaining coverage under Article 10 (discussed below). *In order to ensure the social partners' involvement in all Article 4 measures and other articles that promote collective bargaining, the Government should make public all correspondence between it and the European Commission services on Ireland's JLCs/EROs system.*

The European Commission services has said that most of the provisions of Article 4(1) were inspired by existing ILO

Conventions. Four are referenced in Recital 24 – the 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).

The ILO should therefore be commissioned by Government to review, with Government and with the involvement of the social partners, on building and strengthening collective bargaining, in particular sectoral bargaining, in accordance with the ILO Conventions listed in Recital 24. This review could be undertaken utilising the EU Technical Support Instrument.

Furthermore, given that Ireland supported the adoption of a Directive, provisions of which were inspired in part by two ILO Conventions it has not yet **ratified, the Labour Relations (Public Services) Convention No 151 (1978)⁴⁸ and the Collective Bargaining Convention No 154 (1981)), the Government should now ratify these two Conventions.**

⁴⁷ The expert group report does not identify contributions by individual Member States' representatives but it is clear this exchange concerned Ireland. This issue was apparently raised by Ireland's representatives during and after the sessions reserved for Member States' representatives only.

⁴⁸ It should be noted that the Compilation of Decisions of the ILO Committee on Freedom of Association: Paragraph 1497 states that, 'Convention No. 151, which was intended to complement Convention No. 98, by laying down certain provisions concerning, in particular, protection against anti-union discrimination and the determination of terms and conditions of employment for the public service as a whole, does not in any way contradict or dilute the basic right of association guaranteed to all workers by virtue of Convention No. 87.'

Adopt Extension Mechanisms for Sectoral Collective Agreements

The use of extension mechanisms for sectoral agreements has been identified as the most widespread instrument for achieving high collective bargaining coverage in other Member States.⁴⁹ These ensure that sectoral agreements apply to all companies in the respective sectors.⁵⁰

The European Commission services have said that workers covered by the extension of collective agreements will come under the definition of collective bargaining coverage (Article 3(5)) and will be considered both in the numerator and denominator for estimating coverage, regardless of whether they are members of trade unions or not.

Employment Regulation Orders (EROs) and Sectoral Employment Orders (SEOs) do have de facto extension effects. By contrast, extensions mechanisms for collective agreements no longer exist, since (sectoral) Registered Employment Agreements (REAs) now only bind the unions and employers that are party to the agreement.⁵¹ Consideration should therefore be given towards adopting extension mechanisms for (sectoral) collective

agreements. This could be done for example by **re-instating extension mechanisms for sectoral Registered Employment Agreements (REAs)** and/or through more substantial reform arising from an ILO-led review of Ireland's industrial relations system as suggested above.

Crucially, measures to encourage and support sectoral bargaining will only be effective if accompanied by measures to arrest and reverse the decline in density. If Ireland is to achieve the aim of increasing collective bargaining coverage and of facilitating the exercise of the right to collective bargaining, in accordance with Article 4 obligations, the decline in density must be addressed. Recital 16 is explicit in attributing the erosion of traditional collective bargaining structures over recent decades, inter alia, to the *decline in trade union membership*, (in particular as a consequence of union-busting practices and the increase of precarious and non-standard forms of work).

The OECD points out that in countries such as Ireland, where bargaining takes place predominantly at the company level, coverage 'tends to go hand in hand with trade union

49 Müller and Schulten (2024), p.76

50 Müller and Schulten (2024), Table 1, p.75. Countries that frequently use extension mechanisms include France, Belgium, Finland, Spain, Slovenia, Portugal and the Netherlands

51 Doherty (2016), p.14

membership since having a trade union or worker representation in the workplace is a necessary condition to be able to negotiate a collective agreement'.⁵² Similarly, Doherty says, 'Worker representatives [in Ireland] must rely on industrial relations 'muscle' (not on any legal or state-mandated rights) to achieve their aims,⁵³ and trade unions 'rely, for power and influence, on membership and density levels'.⁵⁴

Provide State Support for Trade Union Membership

Ensure Unions Can Be Representative

France is regularly cited as a country that, despite declining density (down from approximately 23% in the 1970s to 11% in 2016) has been able to maintain very high coverage (98% in 2018) through the use of extension mechanisms for sectoral agreements. The fall in density in France has been attributed to the use of extension mechanisms, as they enable non-union workers to 'free ride' on the collective bargaining efforts of trade unions.⁵⁵ A continuing decline in density in Ireland would not

only undermine the legitimacy of trade unions, including as a social partner, but also with respect to the requirements to be 'substantially representative' (e.g. in order to register an REA and an SEO).⁵⁶ If current legislation requires unions to be 'substantially representative' for REAs (and for SEOs), it is incumbent on Government to promote trade union membership. This would be in line with the 2016 joint statement on a *New Start for Social Dialogue* signed by the European Commission, the Council Presidency and the EU social partners, which committed, inter alia, to 'improve the membership and representativeness of both trade unions and employers' organisations'⁵⁷ and with the Council's Recommendation which, as noted above, urges Member States to take actions 'encouraging and, where appropriate, supporting social partners to put forward initiatives and develop new and innovative approaches and strategies to increase their representativeness and membership bases'.⁵⁸

In the first instance, this entails addressing the issue of trade

⁵² OECD (2019), p.74

⁵³ Doherty (2024), p.213

⁵⁴ Doherty (2024), p.214

⁵⁵ Eustace (2021), p.33

⁵⁶ Doherty (2016), pages 22 & 23.

⁵⁷ This was signed by the ETUC (representing ICTU), BusinessEurope (representing IBEC), UEAPME (now renamed SMEUnited, representing ISME), and CEEP (now renamed Services of General Interest Europe)

⁵⁸ Recommendation 10(d). It also recognises this challenge in respect of specific EU initiatives, saying that the representativeness and the capacity of the national social partners [also] needs to be strengthened with a view to the implementation at national level of Union level autonomous social partner agreements (paragraph 21).

unions' access to workplaces and workers, including digital access, or more correctly of workers' access to trade unions.

Introduce a right for trade unions to access workplaces and workers

The European Commission services have clarified that although Article 4(1) does not explicitly mention a right of access, 'facilitating the access for trade unions to workers can be a measure a Member State may take to protect and promote collective bargaining on wage-setting. Recital 24 acknowledges that measures promoting collective bargaining on wage-setting might include, among others, measures 'easing the access of trade union representatives to workers'.

As noted above, measures *facilitating* and easing access of trade unions to workers obviously implies the existence of such a right in the first place. This is not the case in Ireland however.

The International Labour Organisation (ILO)'s IRLEX legal database of industrial relations in 15 EU Member States including Ireland identifies no legal arrangements in Ireland concerning workers'

and trade unions' access to 'all workplaces in the undertaking to carry out their functions'.⁵⁹ By contrast, IRLEX identifies nine other Member States where such legislation is in place.⁶⁰

Since the 'direct contact of union representatives with workers at their workplace is the most effective way to recruit new and retain existing members, *providing unions with the right of access to companies* and more effective penalties against union-busting activities are important measures to strengthen collective bargaining'.⁶¹ Access to the workplace (both physical and digital) for workplace and union representatives is crucial to reach workers and seek to recruit them into trade unions, should they wish join. Legal rights (i.e. primary legislation) are necessary for workplace representatives to carry out their duties and functions. Such rights must include the right to access new hires. The issue of access to the workplace is an important element of the organisation of workers into trade unions. As one of the purposes of the Directive is to promote collective bargaining and to increase collective bargaining coverage this must be addressed. In some EU countries workplace representatives

59 IRLEX, 3.3.4. IRLEX provides information on industrial relations legal arrangements in 14 EU Member States – Belgium, Bulgaria, Denmark, Finland, France, Hungary, Ireland, Italy, Latvia, Poland, Romania, Slovakia, Spain, Sweden, as well as the UK. The information on Ireland was last updated in 2016.

60 IRLEX identifies measures protecting the right to access in Belgium, Bulgaria, Denmark, Finland, Hungary, Italy, Slovakia, Spain and Sweden. In many of these, protection applies only in respect of trade union representatives.

61 Müller and Schulten (2024), p.78

and unions have a statutory right to access the workplace, in others it is by agreement. Again, in Ireland the imbalance towards the employer in this instance is stark and requires some rebalance. The issue of union organisation must no longer be subject to the veto on an employer. Of course, there must be a level of conditionality and criteria around such a statutory right, but such a right should be enshrined in law.

The Final Report of the LEEF High Level Working Group did acknowledge, under the heading of *Measures to improve the functioning of collective bargaining at enterprise level*, that 'easing the access of trade union representatives to workers' was one of the 'aspects of the [then] proposed Directive, which the Group did not address'.⁶²

As most of the provisions of Article 4(1) were inspired by the four ILO Conventions referenced

in Recital 24, decisions of the ILO's Committee on Freedom of Association⁶³ concerning access to the workplace should be incorporated into primary legislation enshrining the right of trade unions to access workers, in particular paragraphs 1589⁶⁴, 1591⁶⁵, 1592⁶⁶, 1593⁶⁷, 1594⁶⁸ of its most recent Compilation of Decisions.⁶⁹

Legislation should also incorporate relevant obligations under the European Social Charter (also cited in Recital 24). The Council of Europe's Committee of Social Rights has found that 'union leaders must have the right to access the workplace and union members must be able to hold meetings there, within limits linked to the interests of the employer and business needs'⁷⁰ and that 'basic trade union prerogatives' encompasses the 'right of access to the working place'.⁷¹ Induction opportunities for workplace representatives is essential in order

62 Final Report of the LEEF High Level Group, p.8

63 ILO (2018), *Compilation of decisions of the Committee on Freedom of Association*, sixth edition

64 'The Committee has drawn the attention of governments to the principle that workers representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including access to workplaces' (1589).

65 'Workers representatives should be granted access to all workplaces in the undertaking where such access is necessary to enable them to carry out their representation function' (1591).

66 'The Committee considers that, when a meeting with trade union members is held, their union representatives should be granted access to the workplace to participate in such a meeting so as to enable them to carry out their representation function' (1592)

67 'Trade union representatives who are not employed in the undertaking but whose trade union has members employed therein should be granted access to the undertaking. The granting of such facilities should not impair the efficient operation of the undertaking concerned.' (1593)

68 'For the right to organize to be meaningful, the relevant workers organizations should be able to further and defend the interests of their members, by enjoying such facilities as may be necessary for the proper exercise of their functions as workers representatives, including access to the workplace of trade union members' (1594).

69 ILO (2018) *Freedom of Association – Compilation of Decisions of the Committee on Freedom of Association*, Sixth Edition

70 Council of Europe (2022) Digest of the case law of the European Committee of Social Rights, p.82

71 Council of Europe (2022), p.83

that all new recruits to a given firm can consider joining a union and therefore, increasing collective bargaining and collective bargaining coverage.

The Council Recommendation also recognises capacity building as ‘primarily a *bottom-up* process’ that is dependent on the efforts of the social partners themselves who are *best placed to identify* their needs.⁷² In this regard, in the 2024 Friedrich Ebert Stiftung survey of Irish trade union officials, 94% said that allowing physical access to the workplace facilitated trade union organising, bargaining and representation, with 75% identifying the right to enter workplaces to meet workers/members and 67% the provision of better facilities to carry out their functions in the workplace as measures supporting ease of access/the right to access trade unions at work.⁷³ **The Government must introduce a right of trade unions to access workplaces and workers.**

Provide Appropriate Facilities for Trade Union Activity in the Workplace

Alongside facilitating and easing unions access to workers, it is also necessary to ensure through legislation the provision

of appropriate facilities for trade unions. This should give effect to relevant decisions of the ILO’s Committee on Freedom of Association concerning the provision of appropriate facilities, in particular paragraph 1600⁷⁴ as well as nos. 1589, 1593, and 1594 (cited above) of its most recent Compilation of Decisions of the Committee on the Freedom of Association. Trade union member and representatives should have the right to appropriate paid time off to attend union training and meetings, and reduced targets regarding workloads.

Reinstate Tax Relief for Trade Union Subscriptions

The Department of Finance’s argument against the reinstatement of tax relief for trade union subscriptions previously in place between 2001 and 2011 is that it would have ‘no justifiable policy rationale and does not express a defined policy objective.’⁷⁵

As Ireland is now obliged to transpose and implement this Directive that sets down a clear obligation to promote collective bargaining, **a scheme similar but more extensive to the one in place between 2001 and 2011 should be re-instated.**

72 Council Recommendation, paragraph 18

73 O’Sullivan and Murphy, (July 2024), Trade Union Access to Workers – Barriers faced by representatives in Ireland within a comparative European context, p.7. Approximately 293 officials were sent the questionnaire and 179 responses were received, representing a response rate of 61%.

74 ‘Workers representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including the use of email.’ (1600)

75 Department of Finance (2015), Report on Tax Expenditures (October 2015), p.75.

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The OECD points out that several countries including Norway, Sweden, and Finland, use fiscal incentives to promote trade union membership and that an increase in the 'generosity' of the tax relief in Norway in 2021 was 'important for slowing the decline in trade union density'.⁷⁶ Eustace cites Danish research showing that restricting the size of the Danish tax deduction for trade union fees in 2010, encouraged workers to switch to unions with lower membership fees and that focused mostly on providing individual advice services rather than engaging in collective bargaining, leading to fears that the shift in membership patterns could, over time, undermine collective bargaining coverage.⁷⁷ The state needs to make union subscriptions tax efficient in line with the treatment of subscriptions for membership of employers organisations. Trade union members should be treated no less favourably than employers, and such a measure would facilitate more workers choosing to join a union and be a useful capacity building measure.

At the same time, the Department of Finance's rationale for treating subscriptions to employers'

organisations as a deductible expense is essentially that it 'beneficial to the trade'.⁷⁸ If this were the case, then many more of the almost 400,000 enterprises in Ireland would be members of such organisations.⁷⁹ The generosity of the tax relief for subscriptions to employers' organisations should also be conditional on the promotion of collective bargaining.

Promote the Organising of 'Free-Riders'

Geary and Belizón, in their 2024 analysis of so-called 'free riders' (either never-have-been or former members) in Ireland were not in a position to estimate the number of workers who benefit from JLCs and SEOs and who are not union members,⁸⁰ but say that the incidence of free-riding has grown significantly over recent years, and now exceeds one-third of workers in unionised workplaces, including 57% in unionised private sector workplaces and 28% in unionised public sector workplaces.

They suggest a number of policy prescriptions for organising free-riders, including trade union campaigns aimed at young never-

⁷⁶ OECD (2019), p.128.

⁷⁷ Eustace, Alan (2021), *Collective Benefit: Harnessing the power of representation for economic and social progress*, p.31

⁷⁸ Department of Finance (2020) Update on Review of Tax Treatment of Trade Union Subscriptions - Income Tax | TSG 20/02, p.32

⁷⁹ The structural business economy had almost 389,700 active enterprises in 2022. CSO (19 August 2024), *Business in Ireland – Summary Results*.

⁸⁰ Geary and Belizón (2024), p.7

have-been members, highlighting unions positive impact on society, customising organising strategies to different cohorts of free-riders being approached, and adjusting union dues according to workers' income. They also suggest future research focusing on ascertaining workers' motives for engaging in free-riding, with larger sample sizes and repeat surveys.⁸¹ Implementation of these recommendations would contribute to Ireland's obligation to build and strengthen the capacity to engage in collective bargaining. Such measures could be rolled out under measures to build and support trade unions' capacity.

Consider Implementing a Union Default Pilot

Given the challenges workers face in accessing unions in their workplace, O'Sullivan and Murphy have raised the possibility of a union default approach. In contrast to workers 'defaulted' to being non-union as at present, such an approach would involve the automatic enrolment of workers in a union with bargaining coverage over their work (such as by being above a 'low minimum support threshold') with the right to opt-out on an unrestricted basis. This would facilitate the right of freedom to association while also preserving the freedom not to associate. Research in Anglo-Saxon industrial relations regimes suggests this approach

would receive majority support and prompt most workers to join a union, and proponents of such an approach have identified Ireland as one of the countries with the legal infrastructure for establishing such a system. They suggest piloting a union default approach in semi-state bodies which already have a high percentage of unionised workers or an entity which received significant state funding. The Government would financially support unions in offering free membership for a time (e. g., one year) to determine the effects on membership.⁸² This suggestion could be considered further.

Upholding the Right to Strike

Recital 28 points out that Articles 12 and 28 of the Charter of Fundamental Rights of the European Union guarantees respectively freedom of assembly and association and the right of collective bargaining and action. Article 12 of the Charter specifically guarantees the right to form and to join trade unions for the protection of workers interests while Article 28 guarantees the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, **to take collective action to defend their interests, including strike action**, in accordance with EU law and national laws and practices.

81 Geary and Belizón (2024), pages 25-28

82 O'Sullivan and Murphy (July 2024), *Trade Union Access to Workers*, pages 23, p.8.

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Article 16 of the Directive provides that the Directive shall not constitute valid grounds for reducing the general level of protection already provided to workers, nor affect Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to encourage or permit the application of collective agreements which are more favourable to workers.

Any transposition or implementation measures that breach Articles 12 and 28 of the Charter would constitute an act of bad faith and undoubtedly be found in breach of the Charter.

Consider the Ghent System

The OECD has pointed out that trade union membership is above 50% only in OECD countries with the so-called "**Ghent system**", which exists in Denmark, Finland, Sweden and to a lesser extent in Belgium (where it originated) and also in Norway and Iceland.⁸³ This system, in short, involves state-subsidised but voluntary unemployment insurance administered by trade unions, thus providing an incentive to join trade unions.⁸⁴ In Denmark for example trade union administered

unemployment insurance funds (UIFs) complement the public social welfare system, which provides significantly lower and means-tested benefits, than provided by UIFs. Workers can join a UIF without becoming a member of the union that administers that UIF, and cannot be penalised for doing so, but the overwhelming majority of workers join the union associated with their UIF. UIFs thus act as a recruiting channel for trade unions.⁸⁵ **The introduction of a Ghent system in Ireland would obviously be a major undertaking but is one that should be considered further as part of policy measures to increase density.**

Promote Collective Bargaining by Employers

The existence of 'encompassing employers' organisations' and their willingness to enter into negotiations is recognised as an important factor promoting bargaining coverage.⁸⁶ Employers density in Ireland is estimated at approximately 70% (2018) by the OCED, but many employers are firmly opposed to engage with trade unions. The Final Report of the LEEF High Level Working Group acknowledges employer opposition to the operation of

83 OECD (2019) p.129

84 Müller and Schulten (2024), p.76

85 Eustace (2021), pages 28-29.

86 Müller and Schulten (2024), p.79

JLCs in most sectors in which they are established.⁸⁷

Since the Government has been engaging through Ireland's Permanent Representation to the EU with other Member States to 'share best practice with regard to the development of the action plans and the transposition of the Directive'⁸⁸ it is worth now implementing measures that incentivise collective bargaining by employers in other Member States.

Extend Conditionality for State Supports to Employers

There are precedents in place in Ireland where the State has incentivised employers' participation in JLCs and made the provision of resources conditional on the negotiation of EROs. NESC notes that the Government clearly signalled that the provision of proposed additional core funding to the childcare sector in 2022 was *conditional* on agreement of an ERO in the sector,⁸⁹ The Minister Children, Equality, Disability, Integration and Youth pointed out, in the run-up to Budget 2025, that the allocation of an additional €15m in Budget 2025, specifically to support

employers to meet the costs of further increases to the minimum rates of pay was 'conditional on EROs being negotiated by the independent Early Years Services Joint Labour Committee' (emphasis added)⁹⁰

In other sectors, the receipt of national and of EU funding comes with an element of social conditionality. For example, since the start of 2025, the receipt of certain direct Common Agricultural Policy (CAP) payments is conditional on compliance with provisions of EU labour law and health and safety directives,⁹¹ and recipients can be fined for non-compliance.

There is **no obvious reason why similar conditionality provisions should not be introduced to incentivise compliance with the obligation to promote collective bargaining** under the Directive. This principle of conditionality is in fact de facto accepted in the Final Report of the LEEF High Level Working Group. It recommends that consideration of other policy/legal changes which could be made to incentivise participation in JLC mechanisms, 'by providing certain benefits to those operating

87 Final Report of LEEF High Level Working Group (2022), p.9

88 Written answer to Dáil written question 30130/24, 11 July 2024

89 Thomas (2022), p.22

90 Written answer to Dáil written question no. 43286/24, 22 October 2024. The €15 million translates into full year costs of €45 million for programme year 2025/2026 (September 2025 to August 2026).

91 Provisions of the Directive on transparent and predictable working conditions (2019/1152/EU), the Directive on measures to encourage improvements in safety and health of workers (89/391/EEC), and the Directive on *minimum safety and health requirements for use of work equipment by workers* (2009/104/EC).

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in regulated sectors'.⁹² It follows that those not operating in regulated sectors would not be provided with those benefits.

The European Commission points out that Irish businesses have sustained robust performance, with strong turnover and profitability indicators and, in relation to SMEs, notes the 'extensive government support, particularly from agencies like Enterprise Ireland, and by non-bank lenders operating in Ireland'.⁹³ The Government itself highlights that in terms of 'broader supports for businesses', the National Enterprise Hub online portal provides all business owners with a 'centralised signposting service' of over 230 Government supports from 23 Departments and Agencies.⁹⁴ Enterprise Ireland reports working with over 4,000 Irish businesses which employed over 234,000 people in 2024, with €34.6 billion in export sales in 2023.⁹⁵ Direct employment in IDA supported companies stood at just over 300,000 in 2023, with indirect employment amounting to another 240,000.⁹⁶ For more businesses to be persuaded of the merits of engaging in collective bargaining it is essential that the state recognises and rewards firms that do engage in collective bargaining. If it is now state policy as per EU law to be

an advocate, a supporter and an enabler of collective bargaining then it is reasonable and sensible for the state to provide sufficient levels of supports for those firms that engage in collective bargaining in order that other firms will see it in their businesses business interest to also choose collective bargaining.

Include Measures on Public Procurement in the Action Plan to Promote Collective Bargaining

The European Commission services has explicitly suggested that Member States with less than 80% collective bargaining coverage could consider 'including measures on public procurement in the national action plans to *promote* collective bargaining'. (This is in addition to the obligations to under Article 9, discussed below.)

Make Work Permits Conditional on Collective Agreements

Recital 16 attributes the erosion in traditional collective bargaining structures over recent decades to, inter alia, the decline in trade union membership as a consequence of the increase in precarious and non-standing forms of work. The European Commission services have said that legislative measures

⁹² Final Report High Level Working Group, p.14

⁹³ European Commission (2024) 2024 Country Report Ireland, p.78

⁹⁴ Written answer to Dáil written question no.7350/25 (25 February 2025).

⁹⁵ Enterprise Ireland (2025), Delivering for Ireland, Leading Globally Strategy 2025-2029

⁹⁶ IDA (2024), Annual Report 2023, p.6

to curb precarious and non-standard forms of work could be appropriate for promoting collective bargaining, given their negative impact on trade union membership.

The 2018 Inter-Departmental Review of Economic Migration Policy acknowledged that migrant workers 'are often a more vulnerable class of people, particularly in the lower skilled end of the labour market' and, for a number of reasons, are at increased risk of abuse by 'unscrupulous employers'.⁹⁷

ESRI research has also found that over 2011-2018, non-Irish national earned on average 22 per cent less per hour than Irish nationals, with non-Irish women experiencing a double-earnings penalty, earning 30 per cent less than Irish men. The ESRI pointed out that trade union membership often affords workers a greater degree of job security, better working conditions and higher wages than their non-unionised counterparts but notes however that Irish nationals (33 percent) are nearly three times more likely to be members of a union than non-Irish nationals (13 percent).⁹⁸ It says that trade unions 'may need to make greater efforts to raise awareness of their activities among migrants' and,

in addition, 'employers may need to facilitate recognition' to ensure all workers have the option of being represented.⁹⁹

One way of promoting collective bargaining among migrant workers would be to **make work permits conditional on collective agreements**. This would be similar to the approach taken in the early years sector where the allocation of additional funding was conditional on employers agreeing an ERO with trade unions (see above). Such conditionality would replicate the approach taken in other Member States; for example, in Sweden, in order to be eligible as an employer of a labour migrant, the wages paid must be 'in line with or generally correspond to the level of collective agreements'.¹⁰⁰

Consider Introduction of Chamber System

Under Austria's 'Chamber system' almost all companies must join the 'Chamber of the Economy'.¹⁰¹ This concludes collective agreements and, in doing so, guarantees almost 100% collective bargaining coverage. Slovenia had a similar system until the mid-2000s and its abolition resulted in a significant decline in coverage. While a Chamber-type

97 Inter-Departmental Group (2018), Review of Economic Migration Policy, Principle 6.

98 Laurence et al (2023), p.49

99 Laurence et al (2023), p.89

100 Herzfeld Olsson Petra and Sosted Hemme, Mette, in Ratti et al (2024), Chapter 35, *Scandinavian States*, p.518.

101 Müller and Schulten (2024), p.76

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system would obviously be a very significant undertaking in Ireland, it should be considered, particularly at a sectoral level to provide a negotiating partner for unions with the aim of progressively increasing coverage. This would also contribute to implementation of the Council Recommendation, which emphasises strengthening the representativeness of the national social partners, i.e. trade unions and employers' organisations.

Provide Adequate Resources to the WRC Conciliation Service

Finally, more targeted and specialist resources should be given to the WRC Conciliation service in anticipation of an increased level of activity in collective bargaining, in particular at sectoral or cross-industry level.

Responses to Questions Under Article 4(1)(b) Heading

Q1. In relation to the operation of the Joint Labour Committees and how social partners can be incentivised to participate in them?

Joint Labour Committees (JLCs) resulting in Employment Regulation Orders (EROs) can be useful forums, as shown by the success of the Contract Cleaning and Security JLCs over many years. The state should consider the development of additional JLCs in appropriate sectors, in accordance with the views expressed in the Final Report of the LEEF High Level Working Group. **To facilitate employers engaging in JLCs the lifting of the employer veto, as proposed in the Final Report, should be implemented comprehensively and without further delay.** And, to improve the operation of and functioning of JLCs, all participants and chairpersons should be required to undergo appropriate training, from time to time.

Q2. 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 ICTU welcome and would like to see the Final Report of the LEEF High Level Working Group implemented in full and are frustrated at the clear lack of political will in the last two and a half years to progress with this report. ICTU does not believe, and has been so advised, that there is no constitutional impediment to the full implementation of what was recommended in the Final Report on the creation of an obligation on employers to engage in good faith. In so far as the advice imputed to the Attorney General that certain elements of this recommendation “may be unconstitutional”, we are not aware of any specific constitutional provision, or any decision of the superior courts, relied upon to support that opinion.

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Moreover, the decision of the Supreme Court in *AH O'Neill v Unite & Ors* [2024] IESC 18, is authority for the proposition that the constitutionally protected right to form (and join) trade unions is to be construed generously and can include the concomitant right to engage in the type of activities for which trade unions were established. There is no more fundamental trade union activity than to engage in collective bargaining with employers.

However, what is clear is that a single mandatory meeting is insufficient to meet the objectives of the Directive. Essentially, **what is required is the introduction of more of a mandatory process of engagement which creates both the space and time for a realistic engagement**, which ultimately has a greater prospect of leading to collective bargaining and agreement, which is the clear intention of the Directive.

Measures aimed at facilitating the exercise of the right to collective bargaining and of increasing

collective bargaining coverage though good faith engagement initially should be implemented in accordance with decisions of the ILO Committee on Freedom of Association concerning good faith negotiations, in particular paragraphs 1327¹⁰², 1328¹⁰³, 1329¹⁰⁴, 1330¹⁰⁵, 1333¹⁰⁶ of its most recent Compilation of Decisions.

Q3. Other views on how negotiations between social partners on wages could be promoted?

See answers to the first question under the heading of Article 4(1)(a) above.

Q4. On how the social partners could better access the information required to engage in negotiations?

Ensure the Provision of Appropriate Information for Collective Bargaining at all Levels

Article 4(1)(b) obliges all Member States to encourage constructive,

102 'The Committee recalls the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations'.

103 'It is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover, genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties.'

104 'Both employers and trade unions should bargain in good faith and make every effort to come to an agreement, and satisfactory labour relations depend primarily on the attitudes of the parties towards each other and on their mutual confidence.'

105 'The principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided.'

106 'While the question as to whether or not one party adopts an amenable or uncompromising attitude towards the other party is a matter for negotiation between the parties, both employers and trade unions should bargain in good faith making every effort to reach an agreement.'

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 European Commission services have pointed out that this provision is intended to prevent the undermining of one side of the social partners in conducting collective bargaining, and is in line with the spirit of the ILO Conventions mentioned in Recital 24, in particular Convention 98 on the Right to Organize and Collective Bargaining. Furthermore, they have said that 'Member States can play a role in ensuring that social partners are in possession of relevant information on macroeconomic developments, such as sector-level productivity, which is relevant for bargaining on wages, and suggest that the Council's 2023 Recommendation, as well as ILO conventions, recommendations and reports and Eurofound publications could be used as inspiration and guidance.

It should be noted that the Council Recommendation's definition of social dialogue encompasses the 'exchange of information' between employers and workers on 'issues of common interest' that exist as

'bipartite relations between labour and management, including collective bargaining' taking place at national, regional, local or enterprise level across industries or sectors, or at several levels at a time.

Complying with the obligation to ensure both parties have access to the appropriate information necessary to carry out their functions in respect of collective bargaining therefore applies at all levels.

Lo Faro says that the provisions requiring access to appropriate information echoes the kind of intervention in Article 6 of the pay transparency Directive (Directive 2023/970). This provides that employers 'shall make easily accessible to their workers the criteria that are used to determine workers' pay, pay levels and pay progression' (see below also)¹⁰⁷ Similar measures to that required under the pay transparency Directive should therefore be put in place in order to contribute to complying with Article 4(1)(b).

New legislation adopted in Romania in 2023 introduces obligations on employers to provide information to employee representatives during collective bargaining, to invite the trade union representative to board of director meetings on certain

107 Lo Faro (2024), p.188.

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issues impacting employees, while in non-unionised workplaces, employers are obliged, at the request of unions, to hold information sessions once a year on the individual and collective rights of employees, and to invite union representatives.¹⁰⁸

Improve Provision of Company Accounts by the CRO and Ensure Free Access for Unions

At present limited information is available from the Companies Registrations Office (CRO) for many companies and often with extensive delays. Furthermore, trade unions must pay to access company accounts. **The filing of company accounts must be improved and made available to trade unions free of charge if unions are to be able to take part in collective bargaining 'on an equal footing' with employers.**

Provide information on Profits

The European Commission points out that Irish businesses have 'sustained robust performance, with strong turnover and profitability indicators' over recent years.¹⁰⁹ To promote sectoral collective bargaining in particular, the Central Statistics Office should publish data on profits (e.g. gross operating surplus, capital compensation etc) at detailed

NACE level and at the same frequency as the publication of data on earnings.

Improve Provision of Information on Macroeconomic Developments

The provision of macroeconomic developments by the Central Statistics Office should be improved. The Council Recommendation urges Member States to ensure that the social partners have access to relevant information on the overall economic and social situation in their Member State and on the relevant situation and policies for their respective sectors of activity necessary to participate collective bargaining. **Full and comprehensive access to macroeconomic and sectoral data** must be facilitated by the state so the social partners can engage in meaningful and timely negotiations at all levels. Consideration should also be given to improving the provision of relevant analysis by bodies such as NESI and the ESRI.

¹⁰⁸ O'Sullivan and Murphy (2024), p.9

¹⁰⁹ European Commission (2024) 2024 Country Report Ireland, p.78

Responses to Questions Under Article 4(1)(c) Heading

Q1. Are Ireland's protections including Codes of Practice adequate to protect members and representatives of trade unions from unfair dismissal? If not, how can they be strengthened?

At the outset to all responses under the Article 4(1)(c) heading, it must be reiterated that Article 4(1)(c) obliges all Member States to:

'Take measures, as appropriate, to protect the exercise of the right to collective bargaining on wage-setting and to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting.'

The European Commission services have clarified that the 'as appropriate' acknowledges that some Member States already have functioning protection measures in place and so do not need to adopt such measures again. It follows that if Member States cannot demonstrate they have such functioning protection measures in place, they are obliged to adopt such measures.

Ireland's legislative protections are not adequate. The protection against dismissal for engaging in trade union activity provided by the Unfair Dismissals Acts 1997-2015 is restricted to activity engaged in outside of working hours. In effect, an employee must have the permission of the employer to engage in union activity *within* working time and does not have an automatic right to do so. If dismissed for union activity *outside* of working time the maximum award under the Unfair Dismissals Act is two years pay, or four weeks' pay where the employee has suffered no loss arising from their dismissal. The compensation is not a deterrent. The burden of proving that the dismissal was wholly or mainly on grounds of trade activity is on the worker. The confines within which the protections are afforded by the Act are such as to minimise the overall protections afforded. This does not support collective bargaining. New legislation is needed to facilitate the exercise of the right to collective bargaining.

As noted above, the European Commission services have clarified that most provisions in Article 4(1) were inspired by existing ILO Conventions and that the Article 4(1)(c) 'requirements' were inspired by ILO Convention 98.

Legislative measures to protect workers and trade union representatives from acts that discriminate against them in respect of their employment for taking part or wishing to in collective bargaining should therefore take account of relevant decisions concerning dismissals by the ILO's Committee on Freedom of Association as set down in its most recent Compilation of Decisions, in particular paragraphs 957¹¹⁰, 1106¹¹¹, 1086¹¹², and 1155.¹¹³

Q2. Are Ireland's protections, including Codes of Practice, adequate to protect members and representatives of trade unions from discrimination due to their union membership, or activities on behalf of, a trade union? If not, how can these protections be strengthened?

There is no legislative protection for workers and trade union representatives against acts of

discrimination on the grounds that they participate or wish to participate in collective bargaining.

"Discrimination" is dealt with under the Employment Equality Acts 1998 as amended (EEA). There are very limited protections from "victimisation", but they are *not* available without the involvement of the State. Quite explicitly, workers are only protected from victimisation where it is not the practice of the employer to engage in collective bargaining. There is no protection from victimisation for workers wishing to engage in collective bargaining unless they intend to, or already have, invoked the procedures under SI 145/2000 Code of Practice on Voluntary Dispute Resolution or the 2001 Act.

The Employment Equality Acts 1998-2015 should be amended so as to include membership of a trade union, or engaging in trade union activity, as an additional discriminatory ground, so as to render unlawful any form of adverse treatment in employment, including dismissal, grounded on a worker's

110 'The dismissal of workers because of a strike constitutes serious discrimination in employment on grounds of legitimate trade union activities and is contrary to Convention No. 98'.

111 'It would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted by legislation in cases where employers can in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, dismiss any worker, if the true reason is the workers trade union membership or activities.

112 'Protection against anti-union discrimination should apply more particularly in respect of acts calculated to cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the employers' consent, during working hours.

113 'Besides preventive machinery to forestall anti-union discrimination (such as, for example, a request for the prior authorization of the labour inspectorate before dismissing a trade union leader), a further means of ensuring effective protection could be to make it compulsory for each employer to prove that the motive for the decision to dismiss a worker has no connection with the workers union activities.'

membership of a trade union or engaging in trade union activity, including seeking to engage in collective bargaining.

The need for appropriate legislative protection for members and representatives of trade unions 'due to their union membership or activities on behalf of a trade union' is amply demonstrated in the 2024 study *Trade Union Access to Workers* by Dr. Michelle O'Sullivan and Dr. Caroline Murphy of the University of Limerick for the *Friedrich Ebert Stiftung*.¹¹⁴ This asked the views of trade union officials in Ireland of their experiences in union recognition campaigns since 2015 (i.e. since the enactment of the Industrial Relations (Amendment) Act 2015 and also the Code of Practice on Victimisation (S.I. No.463 of 2015). Officials reported experiencing (either occasionally or regularly) the following tactics by employers:

Instilling fear

- 92% reported employers victimising trade union members
- 82% reported employers using management consultants for union avoidance purposes
- 77% reported employers monitoring employee communications
- 61% reported employers threatening closure or relocation

Demonstrating ideological opposition to the trade union

- 88% reported management briefing workers against unions
- 50% reported employers distributing anti-union literature

Reducing demand for a trade union

- 88% reported the establishment of bodies such as an 'employee representation committee'

Respondents reported that the most common factors that act as a barrier to union organising, bargaining and representing were actual or fear of employer reprisals

¹¹⁴ O'Sullivan and Murphy, (July 2024), *Trade Union Access to Workers – Barriers faced by representatives in Ireland within a comparative European context*. Approximately 293 trade union officials were sent the questionnaire and 179 responses were received, representing a response rate of 61 percent.

Respondents reported that the most common factors that act as a barrier to union organising, bargaining and representing were actual or fear of employer reprisals. Examples given included constructive dismissals, with the employer knowing they could lose a case in the Workplace Relations Commission (WRC) but willing to pay the settlement; initiation of sham redundancy processes; isolation of activists; poor performance ratings; using control over working hours and arrangements, flexible and remote work and annual leave; using non-disclosure arrangements to prevent or scare workers from talking to each other; use of bogus self-employment; and exploiting the vulnerable situation of migrant workers, such as in relation to the sponsoring of work visas and the provision of company accommodation, with

O'Sullivan and Murphy noting that non-native English speaking migrant workers being particularly vulnerable.¹¹⁵

Appropriate legislation is clearly needed to protect members and representatives of trade unions from discrimination due to their membership or activities on behalf of a trade union in order to comply with Article 4(1) (c), including by addressing the range of ways in which workers can be discriminated against as outlined in the 2024 FES survey.

Such legislation should take account of relevant decisions by the ILO's Committee on Freedom of Association as set down in its most recent Compilation of Decisions, in particular paragraphs 1078¹¹⁶, 1087¹¹⁷, 1088¹¹⁸,

Appropriate legislation is clearly needed to protect members and representatives of trade unions from discrimination due to their membership or activities on behalf of a trade union

¹¹⁵ O'Sullivan and Murphy (2024), p.14

¹¹⁶ 'Since inadequate safeguards against acts of anti-union discrimination, in particular against dismissals, may lead to the actual disappearance of trade unions composed only of workers in an undertaking, additional measures should be taken to ensure fuller protection for leaders of all organizations, and delegates and members of trade unions, against any discriminatory acts.'

¹¹⁷ 'Protection against acts of anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker.'

¹¹⁸ 'Acts of anti-union discrimination may vary in nature and are not confined to discharge, dismissal, retrenchment or termination of service, but also include all actions taken in retaliation against a worker exercising trade union activities, such as suspension.'

1091¹¹⁹, 1099¹²⁰, 1101¹²¹, 1117¹²²,
1135¹²³, 1136¹²⁴, 1141¹²⁵, 1150¹²⁶ and
1176.¹²⁷

Q3. Are workers sufficiently protected by law, including Codes of Practice, from acts of discrimination if they wish to organise or join a trade union?

44% of workers in Ireland not in a union said that they would establish one if they could in a 2021 survey.¹²⁸ This equates to just over 600,000 workers.¹²⁹

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'. By contrast, IRLEX identifies such

119 'Legislation should allow the possibility to appeal against discrimination in hiring, i.e. even before the workers can be qualified as employees.

120 'Granting bonuses to non-union member staff even if it is not to all non-union workers and excluding all workers who are union members from such bonuses during a period of collective conflict, constitutes an act of anti-union discrimination contrary to Convention No. 98.

121 'The governments obligations under Convention No. 98 and the principles on protection against anti-union discrimination cover not only acts of direct discrimination (such as demotion, dismissal, frequent transfer, and so on), but extend to the need to protect unionized employees from more subtle attacks which may be the outcome of omissions. In this respect, proprietorial changes should not remove the right to collective bargaining from employees, or directly or indirectly threaten unionized workers and their organizations.

122 'One of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures. This protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions. The Committee has considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers organizations shall have the right to elect their representatives in full freedom.

123 'Where a government has undertaken to ensure that the right to associate shall be guaranteed by appropriate measures, that guarantee, in order to be effective, should, when necessary, be accompanied by measures which include the protection of workers against anti-union discrimination in their employment.

124 'In accordance with Convention No. 98, a government should take measures, whenever necessary, to ensure that protection of workers is effective, which implies that the authorities should refrain from any act likely to provoke, or have as its object, anti-union discrimination against workers in respect of their employment.

125 'It may often be difficult, if not impossible, for workers to furnish proof of an act of anti-union discrimination of which they have been the victim. This shows the full importance of Article 3 of Convention No. 98, which provides that machinery appropriate to national conditions shall be established, where necessary, to ensure respect for the right to organize.

126 'The Committee has recalled the need to ensure by specific provisions accompanied by civil remedies and penal sanctions the protection of workers against acts of anti-union discrimination at the hands of employers.

127 'In many cases, the Committee has requested the government to take the necessary measures to ensure that, if reinstatement is not possible for objective and compelling reasons, the workers concerned receive adequate compensation so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination.

128 Geary and Belizon, 2021.

129 The CSO Labour Force Survey estimates 525,000 of the 2,048,000 employees in Ireland in Q2 2021 were trade union members with 1,421,000 non-members. 44% of the non-members equates to approximately 625,000.

arrangements in 12 of the other 14 Member States covered, as well as in the UK, the US and Australia.¹³⁰

Legislation is therefore required to protect workers who wish to organise or join a trade union. Such legislation should take account of relevant decisions by the ILO's Committee on Freedom of Association as set down in its most recent Compilation of Decisions, in particular paragraphs 1078, 1087, 1088, 1091, 1099,

1101, 1117, 1135, 1136, 1141, 1150 and 1176 cited immediately above in the answer to Q2 under the Article 4(1)(ci) heading as well as paragraphs 1189¹³¹, 1194¹³², 1208¹³³, 1216¹³⁴, 1217¹³⁵, and 1218.¹³⁶

Legislation is therefore required to protect workers who wish to organise or join a trade union

130 IRLEX Section 2.1.1.1. Namely, Belgium, Bulgaria, Denmark, Finland, France, Hungary, Italy, Poland, Romania, Slovakia, Spain, and Sweden.

131 'Workers shall have the right to join organizations of their own choosing without any interference from the employer'.

132 'As regards allegations of anti-union tactics in the form of preventing the establishment of workers organizations or bribes offered to union members to encourage their withdrawal from the union and the presentation of statements of resignation to the workers, as well as the alleged efforts made to create puppet unions, the Committee considers such acts to be contrary to Article 2 of Convention No. 98, which provides that workers and employers organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents in their establishment, functioning or administration.'

133 'The alleged offer of conditional benefits by the company provided that it would not be required to enter into a collective bargaining relationship with the union, if true, would be tantamount to employer interference in the right of workers to form and join the organization of their own choosing to represent their occupational interests.'

134 'Where legislation does not contain specific provisions for the protection of workers organizations from acts of interference by employers and their organizations (and provides that any case not provided for by the legislation should be decided, inter alia, in accordance with the provisions laid down in the Conventions and Recommendations adopted by the International Labour Organization, in so far as they are not contrary to laws of the country, and in accordance with Convention No. 98, by virtue of its ratification), it would be appropriate for the government to examine the possibility of adopting clear and precise provisions ensuring the adequate protection of workers organizations against these acts of interference.'

135 'The existence of legislative provisions prohibiting acts of interference on the part of the authorities, or by organizations of workers and employers in each other's affairs, is insufficient if they are not accompanied by efficient procedures to ensure their implementation in practice.'

136 'Legislation must make express provision for appeals and establish sufficiently dissuasive sanctions against acts of interference by employers against workers and workers organizations to ensure the practical application of Articles 1 and 2 of Convention No. 98.'

Responses to Question Under Article 4(1)(d) Heading

Q1. Are employers sufficiently protected in Irish law against acts of interference where they wish to participate in collective bargaining?

At the outset to all responses to the questions posed under the Article 4(1)(d) heading, it must be reiterated that this obliges all Member States:

‘For the purpose of promoting collective bargaining on wage-setting, [to] take measures, as appropriate, to protect trade unions and employers’ organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other’s agents or members in their establishment, functioning or administration.

The European Commission services have also clarified that ‘as appropriate’ here acknowledges that some Member States already have functioning protection measures in place and so do not need to adopt such measures again. It again follows that if a Member State cannot demonstrate they have such functioning

protection measures in place, they are obliged to put them in place.

With regard to the question posed, the International Labour Organisation (ILO)’s IRLEX legal database of industrial relations in Ireland and in 14 other Member States identifies no legislative protections in Ireland for employers’ organisations against such acts of interference by trade unions, trade unions’ agents or members, but does identify such measures in four Member States.¹³⁷

ICTU is not aware however of any acts of interference by trade unions or trade union’s agents or members in Ireland against employers’ organisations participating or wishing to participate in collective bargaining in the establishment, functioning or administration of employers’ organisations in Ireland, but would have no objection in principle to the adoption of such legislation provided employers’ organisations can give examples of such interference and demonstrate the need for such legislative protection and that it upholds the right to bargain collectively, as recognised in the international instruments listed in Recital 24.

¹³⁷ IRLEX, Section 3.2.1.2, namely, Denmark, Poland, Romania, and Sweden.

With regard to acts of interference by employers' organisations, their agents or members against *trade unions*, as obliged by Article 4(1) (d), it is worth reiterating that Recital 16 attributes the erosion of traditional collective bargaining structures over recent decades, inter alia, to structural shifts in the economy towards less unionised sectors *and to the decline in trade union membership, in particular as a consequence of union-busting practices*, as well as to the increase of precarious and non-standard forms of work.¹³⁸

Again, the ILO's IRLEX identifies no such legislative protections for trade unions against interference by employers in Ireland. By contrast, it does identify such legislative protections in five of the 14 Member States covered, as well as in the UK and the US.¹³⁹

The need for legislative protection for trade unions from interference is again demonstrated in the 2024 study *Trade Union Access to Workers* by Dr. Michelle O'Sullivan and Dr. Caroline Murphy of the University of Limerick for the *Friedrich Ebert Stiftung*. They classified the following tactics by employers' experienced by officials (either occasionally or regularly):

Being awkward

- 92% of respondents reported employers stonewalling responding to unions' approaches
- 82% reported employers preventing physical access to workplaces
- 67% reported employers refusing digital access
- 62% reported employers restricting interactions.
- 60%, including 89% of private sector industry unions' officials, felt that securing union recognition had become 'more difficult' or 'much more difficult' to secure since 2015, with only 6% reporting it had become 'easier' or 'much easier' over this period.

When asked if they *personally* experienced employer hostility, either sometimes or often:

- 44% reported having rumours/untruths spread about them
- 33% reported having their movements surveilled/monitored, including 45% of female officials and 29% of male¹⁴⁰
- 32% reported being intimidated by an employer

¹³⁸ The European Commission's proposal for the Directive attributed the decline in trade union membership solely to the 'increase of atypical and new forms of work'. The EU legislature added the references to union-busting practices.

¹³⁹ IRLEX, Section 3.2.1.1, namely, Denmark, Finland, France, Italy, and Sweden.

¹⁴⁰ O'Sullivan and Murphy (2024), Figure 14, p.20

33% reported having their movements surveilled/ monitored, including 45% of female officials and 29% of male

- 28% reported being removed from organisations
- 17% reported experiencing fear, including 24% of female officials and 13% of male ¹⁴¹
- 21% reported that hostility against them personally had curtailed their organising activity and 16% reported it had negatively affected their health and well-being.¹⁴²

These findings do not suggest and nor it is being claimed that all employers engage in such tactics. But it should be noted that 2023 survey research by the Chartered Institute of Personnel and Development indicates that approximately 75% of non-union companies are unwilling to consider collective bargaining with unions, with just 4% of non-union companies willing to consider engaging with a union and that amongst companies already unionised, 26% would

consider “non-union” collective bargaining.¹⁴³

For the purpose of promoting collective bargaining on wage-setting appropriate legislative measures are clearly needed to protect trade unions who wish to take part or are taking part in collective bargaining from acts of interference by employers as regards their establishment, functioning or administration.

As noted above, the European Commission services have also clarified that most provisions in Article 4(1) were inspired by existing ILO Conventions and that Article 4(1)(d) was inspired by ILO Convention 98, such legislative measures should take account of relevant decisions of the ILO’s Committee on Freedom of Association, as set out in its most recent Compilation of Decisions, in particular paragraphs 1189¹⁴⁴,

141 O’Sullivan and Murphy (2024), Figure 14, p.20

142 O’Sullivan and Murphy (2024), Figure 15, p.20

143 Doherty (2024), p.220. and CIPD (17 July 2023), CIPD-IRN Private sector pay and employment report 2023.

144 ‘Workers shall have the right to join organizations of their own choosing without any interference from the employer’.

1194¹⁴⁵, 1208¹⁴⁶, 1216¹⁴⁷, 1217¹⁴⁸, 1218.¹⁴⁹

Q2. Should a statutory entitlement be introduced to allow for trade union access to the workplace, or activities within the workplace, to promote collective bargaining even in the case where an employer has not given permission for such activities in the workplace?

Yes, the issue of access to the workplace is an important element of the organisation of workers into trade unions. As one of the purposes of the directive is promote collective bargaining and to increase collective bargaining coverage this is an issue that must be addressed. In

some EU countries workplace representatives and unions have a statutory right to access the workplace, in others it is by agreement. Again, in Ireland the imbalance towards the employer in this instance is stark and requires some rebalance. The issue of union organisation must no longer be subject to the veto on an employer. Of course, there must be a level of conditionality and criteria around such a statutory right, but such a right should be considered.

Measures to protect trade unions participating or wishing to participate in collective bargaining against any acts of interference in their establishment, functioning or administration with the purpose of promoting collective bargaining on wage-setting, by introducing a statutory right to allow for trade

145 'As regards allegations of anti-union tactics in the form of preventing the establishment of workers organizations or bribes offered to union members to encourage their withdrawal from the union and the presentation of statements of resignation to the workers, as well as the alleged efforts made to create puppet unions, the Committee considers such acts to be contrary to Article 2 of Convention No. 98, which provides that workers and employers organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents in their establishment, functioning or administration.'

146 'The alleged offer of conditional benefits by the company provided that it would not be required to enter into a collective bargaining relationship with the union, if true, would be tantamount to employer interference in the right of workers to form and join the organization of their own choosing to represent their occupational interests.'

147 'Where legislation does not contain specific provisions for the protection of workers organizations from acts of interference by employers and their organizations (and provides that any case not provided for by the legislation should be decided, inter alia, in accordance with the provisions laid down in the Conventions and Recommendations adopted by the International Labour Organization, in so far as they are not contrary to laws of the country, and in accordance with Convention No. 98, by virtue of its ratification), it would be appropriate for the government to examine the possibility of adopting clear and precise provisions ensuring the adequate protection of workers organizations against these acts of interference.'

148 'The existence of legislative provisions prohibiting acts of interference on the part of the authorities, or by organizations of workers and employers in each other's affairs, is insufficient if they are not accompanied by efficient procedures to ensure their implementation in practice.'

149 'Legislation must make express provision for appeals and establish sufficiently dissuasive sanctions against acts of interference by employers against workers and workers organizations to ensure the practical application of Articles 1 and 2 of Convention No. 98.'

union access to the workplace and trade union activities within the workplace should take account of relevant decisions of the ILO's Committee on Freedom of Association as set out in its most recent compilation of decisions, in particular 1589¹⁵⁰, 1590¹⁵¹, 1591¹⁵², 1592¹⁵³, 1593¹⁵⁴, 1594.¹⁵⁵

Q3. On what measures could be introduced which would promote employer engagement in collective bargaining?

See answers to the first question under heading of Article 4(1)(a) above.

Furthermore, ICTU would have no issue with such a statutory entitlement ensuring that access to the workplace and trade union activities within the workplace takes account of relevant decisions of the ILO's Committee on Freedom of Association aimed at ensuring the 'efficient functioning of the enterprise concerned', such as set out in paragraphs 1588¹⁵⁶, 1599¹⁵⁷ and 1593 (cited above).

150 'The Committee has drawn the attention of governments to the principle that workers representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including access to workplaces.'

151 'Governments should guarantee the access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization.'

152 'Workers representatives should be granted access to all workplaces in the undertaking where such access is necessary to enable them to carry out their representation function.'

153 'The Committee considers that, when a meeting with trade union members is held, their union representatives should be granted access to the workplace to participate in such a meeting so as to enable them to carry out their representation function.'

154 'Trade union representatives who are not employed in the undertaking but whose trade union has members employed therein should be granted access to the undertaking. The granting of such facilities should not impair the efficient operation of the undertaking concerned.'

155 'For the right to organize to be meaningful, the relevant workers organizations should be able to further and defend the interests of their members, by enjoying such facilities as may be necessary for the proper exercise of their functions as workers representatives, including access to the workplace of trade union members.'

156 'Access to employers' facilities should not be exercised to the detriment of the efficient functioning of the enterprise concerned.'

157 'If necessary, workers organizations and employers could reach agreements so that access to workplaces, during and outside working hours, can be granted to workers organizations without impairing the functioning of the establishment or service.'

Responses on Other Provisions concerning Collective Bargaining

Though the public consultation does not directly address them, it is necessary to comment on other aspects of Article 4(2) and other Articles of the Directive that concern collective bargaining and the involvement of the social partners.

The Process for Providing the Framework of Enabling Conditions for Collective Bargaining

The European Commission services have said that while the design of the framework of enabling conditions for collective bargaining is up to Member States, the process for designing it is i) by law after consulting the social partners; or (ii) by agreement with them.¹⁵⁸

ICTU is willing to agree the provision of the framework on a tripartite basis and/or on the basis of a joint request and as agreed with employers' organisations if there is a clear and public indication by employers' organisations of their willingness to provide an ambitious framework of enabling conditions for collective bargaining.¹⁵⁹

The Process for Establishing the Action Plan to Promote Collective Bargaining

The European Commission has also confirmed that the process for establishing for the action plan to promote collective bargaining is for Member States to choose by i) consulting the social partners; (ii) reaching agreement with them; or (iii) between the social partners, following their joint request.

Again, ICTU is willing to negotiate an agreement with employers' organisations to establish the action plan on the same basis as outlined above with respect to providing the framework of enabling conditions.

Time-line of the Action Plan

The European Commission services have said that Member States below the 80% threshold are expected to establish their action plans by the end of 2025 at the latest, in line with the obligation on the European Commission to report on their content under Article 10(3).

¹⁵⁸ Report Expert Group, p.24

¹⁵⁹ As per the ETUC's 2020 response to 2nd stage European Commission consultation of the European social partners.

As all Member States are required to provide the European Commission with data and information on the rate and development of collective bargaining coverage by 1 October 2025, this date can be taken as the effective deadline for the publication and notification of the action plan to the European Commission.

Article 4(2) provides that the action plan must be reviewed at least every five years. The obligation to review and adapt ensures that 'measures must be changed or supplemented if the ones initially adopted have not strengthened collective bargaining coverage'.¹⁶⁰ In theory therefore Ireland's Action Plan could cover the period from 1 October 2025 (at the latest) to 1 October 2030. ICTU would propose either:

- i. a three-year timeframe for Ireland's action plan, covering the period from 1 October 2025 to 1 October 2028, or
- ii. a four-year timeframe, covering the period from 1 October 2025 to 1 October 2029 but with a mid-term review in late 2027/early 2028.

The first option would overlap with the period from Ireland's obligation under Article 10 to report by 1 October 2025 on the

rate and development of collective bargaining coverage over 2021-2023, the second report, due by 1 October 2027 covering 2024 and 2025, and part of the third reporting period covering 2026 and 2027 (due by 1 October 2029). It would also facilitate the social partners' involvement at national and EU level in the European Commission's evaluation of the Directive (due by 15 November 2029) under Article 15.

The second option would also overlap with the first three Article 10 reports, with the late-2027/early 2028 mid-term review also facilitating social partners' involvement in the preparations for the European Commission's evaluation by November 2029.

Other Articles That Concern Collective Bargaining

Other Articles concerning collective bargaining and the involvement of the social partners should also be addressed in the transposition and implementation of the Directive. Taken in order of the Articles of the Directive, these include:

Article 3 – Definitions

The European Commission services have stated that the definition of collective bargaining set down in Article 3(3)

¹⁶⁰ Schlachter, Monika in Ratti et al (2024), Chapter 29 – *Germany*, p.435

encompasses all negotiations held between an employer, a group of employers or one or more employers' organisations on the one hand, and one or more trade unions on the other hand, concerning working conditions and terms of employment and not solely wage-related clauses, that the definition of 'collective agreements' set down in Article 3(4) covers all applicable collective agreements, including those declared universally applicable and those not including wage clauses, and that when both definitions are read jointly, it is clear that, in the intention of the co-legislators (i.e. the Council and the EP) that only collective agreements signed by trade unions should be taken into account.

Article 8 – Effective Access of Workers to Statutory Minimum Wages

Article 8 requires Member States with statutory minimum wages to take the necessary action, with the involvement of the social partners, to ensure effective access of workers to statutory minimum wage protection. Recital 30 stipulates that in order to strengthen the effectiveness of enforcement authorities, close cooperation with the social partners is needed, including to address critical challenges such as those related

to abusive sub-contracting, bogus self-employment, non-recorded overtime or health and safety risks linked to an increased work intensity.

Article 8(a) refers to both labour inspectorates and other bodies to respect differences that may exist across Member States as concerns the enforcement of statutory minimum wages according to the European Commission services.

Employees may at present request a WRC inspector to investigate an alleged breach of the NMW. In 2023, 73 such alleged breaches were received by the WRC.¹⁶¹ At the same time however, the WRC has also indicated that just 135 (20%) of 672 employers inspected as part of its campaign in Q1i2023 to coincide with the increase in the NMW were compliant, that another 443 (66%) 'became compliant as part of the inspection process', that three employers were prosecuted, and that 72 (11%) inspection processes were 'ongoing'.¹⁶²

Given their 'unique access to the workplace 'on the ground', the social partners may be in the best position to monitor employers' compliance with the relevant legal framework.¹⁶³ Aranguiz and Bednarowicz say that it might

¹⁶¹ WRC Annual Report 2023 (2024), p.95

¹⁶² WRC Annual Report 2023 (2024), p.22

¹⁶³ Aranguiz, Ane and Bednarowicz, Bartłomiej, in Ratti et al (2024), Chapter 17 - *Effective Access to Workers to Statutory Minimum Wage* (Article 8), p.257

be easier for 'affected non-compliance workers, especially from more vulnerable groups, to turn to their representatives to seek advice or lodge a complaint rather than file an official complaint with an inspectorate.

The Safety, Health and Welfare at Work Act 2005 (Article 25) provides for the selection and appointment by employees from amongst their number at their place of work a safety representative, or by agreement, with their employer, more than one safety representative, to represent them at the place of work in consultation with their employer on matters related to safety, health and welfare at the place of work.

Similar provisions should therefore be introduced for the selection and appointment by employees of a NMW representative, in order to ensure workers' effective access to the NMW, in line with Article 8.

Article 9 – Public Procurement

The European Commission services have said that the aim of Article 9 is to ensure compliance with statutory minimum wages and wages set by collective agreements in the awarding and performance of public procurement or concessions contracts. Non-compliance with the social clause of the existing public

procurement directives appears to be a 'significant phenomenon in many countries' according to the European Commission services. The European Commission's Impact Assessment referred to a 'lack of data on the implementation of the social clause' in Ireland (as in all Member States).¹⁶⁴

The European Commission services set out a number of examples of measures that could now be taken by Member States to ensure compliance, including:

- Providing for contracting authorities and entities to apply as a condition for the performance of contracts, in the procurement or concession documents, that the economic operator shall respect the right to organise and collective bargaining.
- Introducing a law that establishes as a legally binding condition for the performance of the contract that the collective agreement, which applies to the specific performance, is respected.
- Providing that any economic operator that breached workers social and labour rights will be excluded from receiving public procurement and concession contracts for a certain period of time.

164 European Commission (October 2020), *Impact Assessment*, Table A9.5, p.169 with respect to Ireland.

The establishment of a public register of collective bargaining processes, housed in the DETE and publicly accessible would also contribute to facilitating compliance with the social clause. Such registries exist in some other Member States, for example in Belgium, where signed agreements are registered with the Ministry of Employment,¹⁶⁵; in Poland for 'supra-company' collective agreements¹⁶⁶; and in Estonia.¹⁶⁷

Despite the commitment in the Department of Public Expenditure, NDP Delivery and Reform's *Statement of Strategy 2023-2025* to 'shape a future for public procurement that is transparent and socially, environmentally and economically sustainable, the Article 9 obligations do not appear to have been considered by Government in the preparations for the planned National Public Procurement Strategy; there is no apparent acknowledgement of Ireland's obligations under Article 9 in the Department of Public Expenditure's policy statement, *Developing an New Public Procurement Strategy for Ireland* (June 2024), nor in the *Strategic Public Procurement Roadmap*, published early in 2025.

It should also be noted that the Department of Public Expenditure said, when announcing the launching the public consultation on the development of a National Public Procurement Strategy on 25 March 2025, that it was 'particularly keen to have inputs from member of the business community'.¹⁶⁸ By contrast, the European Commission's (non-exhaustive) target audience of stakeholder groups likely to be most interested in its December 2024-March 2025 public consultation for its planned evaluation of the procurement directives, explicitly identified 'social partners representing trade unions and employers'.¹⁶⁹

Article 10 - Monitoring and Data Collection

Article 10(2) obliges all Member States to report on the rate and development of collective bargaining coverage. This is to be disaggregated by gender, age, disability, company size and sector as far as available.

Collective bargaining coverage in Ireland is estimated at 34% (2017) in the OECD/AIAS ICTWSS database. The European Commission services favour the use of this

165 Dorsemont, Filip in Ratti et al, (2024), *Chapter 25 – Belgium*, p.378

166 Florczak Izabela and Otto, Marta in Ratti et al (2024), *Chapter 34 – Poland*, p.512

167 Kallaste, Epp, in Müller, Torsten, Vandaele, Kurt, and Waddington, Jeremy (2019), *Collective bargaining in Europe: towards an endgame Volume I*, Chapter 9 Estonia: simultaneous institutionalisation and waning of collective bargaining.

168 Of the social partners, the Department of Public Expenditure only invited representative bodies, including IBEC, ISME and the SFA to the launch.

169 ICTU took part in this public consultation through the European Trade Union Confederation.

database to report on the rate and development of collective bargaining coverage 'as defined in Article 3(5) between employers and trade unions (Article 3(3)).

It should be noted that the source of the estimate for Ireland is Professor Jelle Visser of the University of Amsterdam. Due to the 'lack of comprehensive data on the number of employees covered (WCB) or official coverage rates (AdjCov)', he based his estimates on the 'results of the National Workplace Survey and [the] development of union membership'.¹⁷⁰

There is a need therefore to ensure comprehensive data on collective bargaining coverage in order to comply with Ireland's obligations under Article 10(2)(a)¹⁷¹, and with respect to the European Commission's obligation under Article 10(3) to report on the 'progress and effectiveness' of national action plans, to contribute to the effective monitoring of the implementation of Article 4.

We note that the Council's advisory Employment Committee Indicators Group (EMCO IG)'s 2025 work programme¹⁷²

commits to cooperating with the Commission and the [European] social partners, as necessary, to prepare an opinion to the Council on improving data collection on social dialogue, including collective bargaining, for monitoring implementation of the Council Recommendation on strengthening social dialogue. ICTU is engaging with the ETUC on this matter and is keen to engage with Government at national level. As the European Commission services have said, the Directive foresees a significant role for social partners in monitoring and data collection in the case of collective bargaining systems as the social partners hold a large part of the data to be reported¹⁷³ (see also section on the labour market statistics on businesses regulation below).

Article 12 - Right to redress and protection against adverse treatment or consequences

Article 12 stipulates that Member States shall take the measures necessary to protect workers and workers' representatives, including those who are trade union members or representatives from any adverse treatment by an employer and from any

170 Garner, Andrea and Martin, Sebastian, OECD (no date), *Collective Bargaining Coverage - A detailed methodological note*, p.20

171 Ireland's first report under Article 10(2) is due by 1 October 2025 covering 2021, 2022, and 2023.

172 Council of the European Union (February 2025), Employment Committee work programme for 2025, p.21

173 It is worth noting in passing that there is no official monitoring of the rate or development of collective bargaining coverage in Denmark and that 'existing numbers' rely on data and information put forward from the main employers' organisation' (Olsson, Petra Herzfeld and Søsted Hemme, Mette in Ratti et al (2024), *Chapter 35 – Scandinavian States*, p.538)

adverse consequences resulting from a complaint lodged with an employer or resulting from any proceedings initiated with the aim of enforcing compliance in the case of infringements of rights relating to minimum wage protection.

Recital 35 stipulates that workers and workers' representatives, including those who are trade union members or representatives, should be in a position to exercise their right of defence when their rights relating to minimum wage protection have been violated.

Bell and Eustace point out that the National Minimum Wage Act 'does not expressly confer protection from victimisation on workers' representatives'.¹⁷⁴ The National Minimum Wage Act therefore needs to be amended to provide such protection.

As noted above, the European Commission services have said that Ireland's system of sectoral regulations approved by the government on the basis of a proposal from joint labour committees or a labour court is subject to Articles 12 as the minimum wage set in these sectoral regulations can be considered a minimum wage in the sense of Article 3(1). It would follow

that this also applies to minimum wages in the sense of Article 3(1) set by SEOs and by REAs.

Recital 14 acknowledges that non-compliance with existing rules has been found to affect, in particular, women, young workers, low-skilled workers, migrant workers, single parents, persons with disabilities, workers in non-standard forms of employment such as temporary workers and part-time workers, and agricultural and hospitality workers. Bell and Eustace say that it 'remains challenging for a complainant to navigate the intricacies of the law without advice and representation. This is especially true for migrant workers'.¹⁷⁵ Muller and Schulten identify the right to collective redress or class action as important for ensuring that trade unions can initiate legal action on behalf of individual workers,¹⁷⁶ while Razzolini says that wage claims might be much more effective if brought collectively through class and collective actions.¹⁷⁷ Consideration should therefore be given to introducing such a system in Ireland in respect of Article 12.

Article 13 - Penalties

Article 13 requires all Member States to provide for penalties for breaches of minimum

174 Bell and Eustace in Ratti et al (2024), p.487

175 Bell and Eustace in Ratti et al, (2024), p.487

176 Müller and Schulten (2024), p.78

177 Razzolini, Orsola in Ratti et al (2024), Chapter 33 – Italy, p.500

wage protection are 'effective, proportionate and dissuasive'.

As noted above, the European Commission services have said that Ireland's system of sectoral regulations approved by the government on the basis of a proposal from joint labour committees or a labour court is subject to Articles 13. It would also follow that it applies to minimum wages in the sense of Article 3(1) set by REAs.

At present, failure to pay the national minimum hourly rate of pay is a criminal offence, punishable upon summary conviction, by a fine not exceeding €2,500 or imprisonment not exceeding six months or both.¹⁷⁸

The European Commission services have said that the evaluation of whether a given penalty or system of penalties meets the criteria of effectiveness, dissuasiveness and proportionality has to be done on a case-by-case basis. They point out that the CJEU has in past held for example that purely nominal compensation or setting limits to the amount recoverable by way of reparation of damage caused did not comply with these criteria. O'Sullivan and Murphy (2024) cite fines for breaches of GDPR being indexed to financial turnover as well as research into breaches

of wage laws in the USA which found that damages would need to exceed 24 times the unpaid wages owed in order for a cost-benefit analysis to come out in favour of compliance.¹⁷⁹

Article 17 – Transposition and Implementation

Article 17(3) obliges all Member States to take, in accordance with their national law and practice, adequate measures to ensure the effective involvement of the social partners with a view to the implementation of this Directive, while Article 17(4) requires all Member States to include in the communication to the Commission on the main measures of national law which they adopt in the field covered by this Directive, a 'description of the involvement of the social partners in the implementation of this Directive. The European Commission services have said that they expect the involvement of social partners in the implementation of the Directive, to be 'timely, meaningful and with feedback on the social partners' contributions' and to be 'substantive and not purely formal'.

The European Commission services have also said that Member States may entrust the social partners with the total or partial implementation of the Directive, where the social partners jointly request to do so,

¹⁷⁸ Written answer to Dáil written question no.5797/24, 8 February 2024

¹⁷⁹ O'Sullivan and Murphy (2024), p.23

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and as long as the Member State takes all the necessary steps to ensure that they can at all times guarantee the results sought under the Directive, and that this may also include the action plan to be established under Article 4(2).

If there is a clear and public indication by the employers' organisations of their willingness to provide an ambitious action plan to promote collective bargaining, setting out a clear timeline and concrete measures to progressively increase coverage, and agreement is reached by the social partners on such an action plan, ICTU would be willing to jointly request to fully or partially implement it.

Obligations to promote collective bargaining under other EU Legislation

The Final Report of the LEEF High Group said the focus of the

Group's work was to propose means by which plans and frameworks, developed by the social partners in conjunction with the State, could be put in place so that Ireland is 'well-positioned to meet its obligations under EU law'.¹⁸⁰ The European Commission services have clarified that Article 4 would 'benefit collective bargaining in general'. Transposition and implementation should therefore be used as an opportunity to give effect to Ireland's obligations concerning collective bargaining under other adopted EU legislation, including legislation to be transposed and implemented over the coming years. In particular, ICTU would refer to the Council Recommendation on strengthening social dialogue (discussed above), the pay transparency directive¹⁸¹, the platform work directive¹⁸², the

180 Final Report of the LEEF High Level Working Group (2022), p.6

181 Directive (EU) 2023/970. Article 13 obliges Member States to encourage the exercise of the right to collective bargaining on measures to tackle pay discrimination and its adverse impact on the valuation of jobs predominantly carried out by workers of one sex. It was formally adopted by the Foreign Affairs Council on 24 April 2023 with the Government, represented by the Minister for Foreign Affairs (Micheál Martin TD) voting in favour. The deadline for transposition is 7 June 2026.

182 Directive (EU) 2024/2831. Article 7(d) prohibits digital labour markets from processing personal data through automated monitoring or decision-making systems to inter alia 'predict the exercise of fundamental rights, including the right of association [and] the right to collective bargaining and action, while Article 25 obliges Member States to encourage the exercise of the right to collective bargaining in platform work, including to facilitate the exercise of their rights related to algorithmic management. This Directive was formally adopted by the Environment Council on 14 October 2024 with the Minister for the Environment, Climate and Communications representing the Government. The deadline for transposition is 2 December 2026.

corporate sustainability reporting directive^{183, 184}, the corporate sustainability due diligence directive,¹⁸⁵ and the labour market statistics on business regulation.¹⁸⁶

Future EU Initiatives to Increase Collective Bargaining

In addition, it is possible there will be further EU initiatives to promote collective bargaining in the years ahead. In support, ICTU would refer in particular to:

- The opinion on *Future Policy Priorities for the European*
- The *La Hulpe Declaration on the future of the European*

Pillar of Social Rights, adopted by the Council in March 2024, refers to the Adequate Minimum Wages Directive and the Strengthening Social Dialogue Recommendation but says that 'the 'declining trends in trade union density, the low share of workers covered by collective agreements in most Member States, the declining wage share, as well as the persistent lack of agreements at Union level between EU social partners, may require further efforts in this direction'.¹⁸⁷

183 Directive (EU) 2022/2464. This, as well as supplementary 2023 European Commission delegated regulations, oblige undertakings within its scope to report annually on collective bargaining, including the rate of its own workforce and in their value-chain covered by collective agreements. Examples of collective bargaining policies to be reported include non-interference in trade union formation and recruitment (including trade union access to undertakings), bargaining in good faith, adequate time off for workers' representatives, [the provision of] facilities, dismissal protection for workers' representatives, no discrimination of trade union members and workers' representatives, and also the reduction in the gender pay gap through collective agreements. Recitals 14 and 9 acknowledges that better sustainability reporting on such matters would enable trade unions and workers' representatives to be 'adequately informed and therefore able to better engage in social dialogue'. The Directive was formally adopted by the Education, Youth, Culture and Sport Council on 29 November 2022 with the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media representing the Government. The deadline for transposition was 6 July 2024 and Ireland notified S.I. No.334/2024 - the EU (Corporate Sustainability Reporting) Regulations 2024 of 9 July 2024 and S.I. No.498/2024 - the EU (Corporate Sustainability Report)(No.2) regulations 2024 of 4 October 2024 as transposition measures. It should be noted however that the European Commission's February 2025 'Omnibus' proposal seeks to limit its (already narrow) scope and postpone some of the reporting deadlines.

184 DETE's guide to this Directive includes a link to an IBEC guide, *Unpacking CSRD – a guide for business*, which acknowledges the obligations concerning collective bargaining.

185 Directive (EU) 2024/1760 acknowledges the right to strike and the right to collective bargaining. The deadline for transposition is 26 July 2026. Again, the European Commission's February 2025 'Omnibus proposal' seeks to defer the transposition deadline to 27 July 2027 and also limit its scope.

186 The labour market statistics on businesses regulation was adopted by the Council on 24 March 2025 with Ireland, represented by the Minister for Agriculture, Food, Fisheries and the Marine and the Minister of State at the Department of Agriculture, Food and the Marine and at the Department of the Environment, Climate and Communications, voting in favour. It states that monitoring pursuant to the Adequate Minimum Wages Directive requires accurate information on the coverage of collective pay agreements (recital 2) and stipulates the collection of information on the 'economic, legal, geographical and employment information on the local unit to which each sampled employee is attached, and on its enterprise, including collective pay agreements' (Annex). It has yet to be published in the EU Official Journal. It applies from 1 January 2026.

187 The Minister of State at the Department of Enterprise, Trade and Employment represented the Government at this meeting. The Opinion was prepared by the Council's advisory Employment and Social Protection Committees, of Member States' officials including from the Department of Enterprise, Trade and Employment and the Department of Social Protection for the Government.

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Pillar of Social Rights commits to upholding and reinforcing the right to collective bargaining, including by further enhancing EU cooperation with the Council of Europe and the International Labour Organisation (ILO). It calls for 'sustainable public procurement, including to promote collective bargaining' and says the public procurement directives could be evaluated and, if needed, further steps taken.¹⁸⁸

- The European Council's *Strategic Agenda, 2024-2029*, adopted by the Taoiseach and other EU leaders on 27 June 2024, recalls the European Pillar of Social Rights and commits the EU and Member States to 'aim to strengthen social dialogue'.
- The European Commission President's Political Guidelines for the 2024-2029 Commission issued in July 2024 states that, 'We must ensure fair transitions and good working conditions for workers and self-employed people. And crucial for that is Social Dialogue – the hallmark

of our social market economy. We will therefore work to *increase collective bargaining* and strengthen European Social Dialogue.'

- The European Commission work programme for 2025, issued in February 2025, outlines that its Quality Jobs Framework, due in Q4 2025, will aim to 'ensure quality jobs with decent working conditions, high standards for health and safety and *collective bargaining*'.¹⁸⁹

It is obviously not possible to say what will arise from all of the above, but they do reflect a new consensus at EU level that acknowledges the broad benefits of collective bargaining. As the Council Recommendation states, 'Member States with robust frameworks for social dialogue and a wide coverage of collective bargaining tend to have more competitive and resilient economies'.

¹⁸⁸ This Declaration was signed by the EU Institutions, the Governments of 25 Member States (all bar Sweden and Austria, the ETUC, SMEUnited (which represents ISME at European levels) and civil society organisations. While Ireland did support the Declaration, it appended a statement: 'The system of industrial relations in Ireland is essentially voluntary in nature. *There has been agreement on all sides* that the terms and conditions of employment of workers is best determined by the process of voluntary collective bargaining between an employer or employers' association and one or more trade unions, without the intervention of the State.' ICTU was not consulted on this beforehand. The Hungarian Government also made a statement, in its case stating that it 'interprets the concept of 'gender' as reference to 'sex' and the concept of 'gender equality' as reference to 'women and men shall have equal rights'.

¹⁸⁹ European Commission (11.2.2025), Work Programme 2025, p.8

Final Remarks

The EU's current consensus in favour of collective bargaining reflects in part a broad re-assessment of collective bargaining that has taken place within international institutions over the past decade or so. Institutions such as the World Bank, the IMF and the OECD have increasingly acknowledged the positive impacts of both higher levels of trade union membership and of collective bargaining coverage over the past decade.¹⁹⁰ The World Bank has acknowledged the role unions and collective bargaining play in equalising earnings distributions noting that wage inequality rises when union membership is in decline and falls when it is rising.¹⁹¹ The IMF acknowledges that the decline in unionisation is related to the rise of top income shares and less redistribution, with increasing inequality dampening 'investment, and hence growth, by fuelling economic, financial, and political instability'.¹⁹²

It is also increasingly recognised internationally that collective bargaining also improves

productivity and competitiveness. The OECD has concluded that the collective bargaining systems of the Nordic countries as well as Austria, Germany and the Netherlands produce the best labour market outcomes in terms of wages, employment and productivity, particularly for women, young people and 'low-skilled' workers. It says that collective bargaining 'can increase incentives for companies to invest in innovation, if the presence of a bargaining setting prevents the option of increasing profits by simply reducing wages'¹⁹³ and that collective bargaining can help smooth the transition to an increasingly complex labour market but that making the most of collective bargaining in the future world of work will require governmental intervention, 'notably to lift the legal barriers to collective bargaining'.¹⁹⁴ The European Commission's 2020 proposal for the Directive echoed this view with its acknowledgement that collective bargaining 'pushes increases in productivity'.¹⁹⁵ Similarly, the Council's Recommendation

190 See McDonnell, Tom (2021), *Collective Bargaining Trade unions, economic performance and inequality*, Nevin Economic Research Institute

191 Gordon Betcherman, (2012), The World Bank, *Background Paper to the 2013 World Development Report*.

192 Dabla-Norris, E., Kochhar, K., Suphaphiphat, N., Ricka, F. and Tsounta, E. (2015), *Causes and Consequences of Income Inequality: A Global Perspective* IMF: Washington, p.4

193 Ibid, p.27

194 OECD (2019), *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, p.19

195 European Commission (2020), COM(2020) 682 final, pages 3 and

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states that, 'Member States with robust frameworks for social dialogue and a wide coverage of collective bargaining tend to have more competitive and resilient economies'. More recently, the Draghi report stresses that competitiveness today is 'less about relative labour costs and more about knowledge and skills embodied in the labour force' and warns against seeking to promote competitiveness by using wage repression to lower relative costs.¹⁹⁶

Looking beyond the economic benefits of collective bargaining, at a time when, as the Programme for Government says, 'democracy is under threat globally from increasing extremism as well as the spread of misinformation and disinformation', Ireland's long democratic traditions cannot be taken for granted,¹⁹⁷ it is important to recognise that enabling workers to take part in 'self-government', to a degree, has important spill-over effects for wider society - union members are more politically active than non-members have positive attitudes towards democracy.¹⁹⁸

Initiatives are already underway in Britain and in Northern Ireland to promote collective bargaining. The British Government's

Employment Rights Bill 2024-25, introduced on 10 October 2024, includes provisions, inter alia, concerning trade union access and recognition, facilities and time off for trade union activities and duties, to protect trade union members from discrimination, protecting workers taking industrial action, and promoting sectoral collective bargaining in Britain.¹⁹⁹ Measures to promote collective bargaining are also being considered in Northern Ireland. The 'Good Jobs' Employment Rights Bill announced by the Minister for the Economy, Dr Caoimhe Archibald MLA on 29 April, includes provisions to concerning trade union access to workplaces, including digital access, trade union workplace recognition, introducing sectoral collective bargaining ('with the overarching aim of working towards the EU Adequate Minimum Wage target of a collective bargaining coverage rate of 80%'), and reform to industrial action balloting and notice ('to reduce the administrative burden on trade unions when conducting ballots for industrial action').²⁰⁰ These are to be introduced through a combination of primary and secondary legislation as well as policy developments.

196 Draghi, Mario (2024) *The Future of European Competitiveness* (2024), p.13

197 Government of Ireland (2025), Programme for Government – *Securing Our Future*, (Introduction)

198 O'Sullivan and Murphy (2024), p.3

199 House of Commons Library Research Briefing (23 October 2024), Employment Rights Bills 2024-25

200 Department of the Economy (29 April 2025), The 'Good Jobs Employment Rights Bill', Theme C: Voice and Representation.

If '[a]dvancing equality and inclusion is a whole of Government issue', as the new Programme for Government says,²⁰¹ it is obvious there will have to be more collective bargaining in Ireland. This means moving away from the current approach whereby the State's role is 'largely confined to facilitating the collective bargaining process through establishing by legislation, institutions to assist in the resolution of disputes between employers and workers'²⁰² to one where the State actively promotes collective bargaining. The state must take an 'all-of-government' approach to the promotion of collective bargaining, by all departments and state agencies, which does not happen at present.²⁰³ Such an approach to collective bargaining would contribute to achieving the Programme for Government's commitment to implement a 'Whole-of-Government Strategy' to fully integrate the SDGs into national policies and initiatives, ensuring that each goal [including

SDG 8] is actively pursued across all levels of government.²⁰⁴

This approach would also contribute to achieving the Government's objectives with regard to gender equality. The Programme for Government acknowledges that despite significant achievements in recent years, there remains a gap between women and men in terms of pay and full participation in all economic sectors and commits, amongst other initiatives, to publish and implement an updated National Strategy for Women and Girls. In this regard it should be recalled that the 2017 National Strategy for Women and Girls included a specific commitment to 'initiate dialogue between union and employer stakeholders to address the gender pay gap' (action 1.22), while the 2021 Citizens' Assembly on Gender Equality recommended the establishment of a legal right to collective bargaining to 'improve wages, working conditions and rights in

201 Government of Ireland (2025), Programme for Government – *Securing Our Future*, p.97

202 Ireland's Statement on La Hulp Declaration (14 June 2024)

203 To give just one example, Fáilte Ireland has been running an 'Employer Excellence Programme' for some years. This provides a 'quality assurance mark' to participating employers to help the tourism sector tackle 'one of its biggest challenges' – staff retention – by supporting business in 'attracting and supporting great people' (Annual Report 2023: 16). However, the Oireachtas Joint Committee on Tourism, Culture, Arts, Sport and Media's November 2022 report 'Working Conditions and Skills Shortages in Ireland's Tourism and Hospitality Sector' recommended that Fáilte Ireland enhance the programme to 'encourage employers to grant uninhibited access to trade unions' and to coordinate a publicity campaign to highlight such initiatives. This has not been done. Furthermore, in May 2023, the Government approved Fáilte Ireland as a 'Sustainable Development Goal Champion'. This presumably covers implementation of SDG 8, which commits to protect labour rights for all workers, particularly women, migrants and those in precarious employment (Target 8.8). No action appears to have been taken on this however. Fáilte Ireland's says the 'perceptions' of employees 'impacted' by the Employer Excellence Programme are 'changing for the better' (Annual Report 2023:16).

204 Programme for Government (2025), p.51

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all sectors.’ The ILO 2022 Social Dialogue report states that recent studies have found that a shift away from collective bargaining to ‘flexible pay-setting through individual bargaining’ is associated with an increase in the gender pay gap, and that collective bargaining is an effective way of tackling some of the ‘unexplained “structural” inequalities such as the systematic undervaluation of women’s work and the “motherhood” penalty.’²⁰⁵ Recital 3 acknowledges that Article 23 of the Charter of Fundamental Rights of the European Union provides for the right to equality between women and men in all areas, including employment, work and pay, while Recital 10 states that women are among those who still have a higher probability of being minimum wage or low wage earners and, given the over-representation of women in low-paid jobs, improving the adequacy of minimum wages contributes to gender equality, closing the gender pay gap and pension gap, as well as elevating women and their families out of poverty. It is for this reason that the Article 10 reporting obligations require the data to be disaggregated by **gender**, age, disability, company size and sector as far as available, including for the

rate and development of collective bargaining coverage.

Promoting collective bargaining would also contribute to achieving the Programme for Government objectives of achieving a 51% reduction in emissions from 2018 to 2030, net-zero emissions no later than 2050 and to set ‘ambitious targets to reduce greenhouse gas emissions by 2040’. A 2019 study of 34 OECD countries (including Ireland) over the period 1970 and 2014 found that higher trade union membership was positively associated with lower national carbon dioxide emissions per capita, and lower membership with higher emissions.²⁰⁶

To be clear, ICTU sees this Directive which it should be recognised establishes for the first time ever an EU framework for promoting collective bargaining with the aim of ‘improving living and working conditions’²⁰⁷ not just as perhaps the most progressive the EU has ever adopted and if transposed and implemented as intended to be potentially transformative and enormously beneficial for industrial relations in Ireland, but as absolutely central to Ireland’s effective adherence to the EU treaty obligation to ‘work

²⁰⁵ ILO (2022), *Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery*, p.96.

²⁰⁶ Alvarez, C. H., McGee, J. A., & York, R. (2019). *Is Labor Green?: A Cross-National Panel Analysis of Unionization and Carbon Dioxide Emissions*. *Nature and Culture*, 14(1), 17-38.

²⁰⁷ Article 1(1)

for a 'highly competitive *social* market economy.'²⁰⁸

And we very much agree with the former chair of the High Level Working Group that:

'What the Directive is very clear in emphasising, however, is that Member States are not in a position to equivocate. The obligations in Article 4 are clear: Member States shall promote collective bargaining. For Member States like Ireland (and others) where the State has traditionally been (at best) a passive observer, change must come.'²⁰⁹

ICTU is willing and keen to engage with Government and employers' organisations on achieving the necessary change in Ireland.

208 Treaty on European Union, Article 3(3).

209 Doherty (2024), p.224

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