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Public Consultation on Ireland's Action Plan to promote Collective Bargaining

Required
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Stratis Consulting is Irelands leading specialist consultancy supporting organisations on strategic employment relations. We are an expert, partner-led, consultancy comprising the most experienced team of employment relations (ER) practitioners in Ireland. We are a trusted partner with blue-chip employers across both the private and public sectors, and each Partner has a minimum of 25 years' experience in supporting, guiding, and advising employers on strategic ER projects.

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4.*Article 4 of the Directive on Adequate Minimum Wages states:*
With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall:

(a) 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.

Do you have views in relation to training or other capacity building activities which would assist the social partners to engage in collective bargaining?

Stratis would support funding assistance for employers and trade unions who wish to engage in and promote joint training on collective bargaining, effective communications, consensus-based decision making and effective dispute resolution.

Approved programmes could be supported from the National Training Fund by up to a level of 2/3rds of the cost structured according to Company size.

It would also be appropriate to support separate training and capability building for Managers and Trade Union representatives on collective Bargaining, effective communications, consensus-based decision making, and effective dispute resolution, particularly where workplace relationships are adversarial and where joint training cannot be undertaken in the first instance.

Joint Training is best delivered on an in-company basis with Managers and Trade Union Representatives receiving the same content at the same time where they can be encouraged to review how they work together to develop agreed action plans for improved engagements.

Separate Management and Union Representative Training can be undertaken at company level or in a public programme setting but is more effective with established management and Union groups and may indeed be a precursor to Joint Training.

Stratis will work with all relevant stakeholders to actively support any initiative in this area including the development of bespoke content, the training of trainers and oversight of high-quality programme delivery. Pilot Programmes could be delivered and reviewed based on experience before any wider roll out.

5. *Article 4 of the Directive on Adequate Minimum Wages states:*
With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall

(b) encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting.

Do you have views in relation to the operation of Joint Labour Committees and how social partners can be incentivised to participate in them?

In relation to JLC's, they were set up originally to establish sectoral minimum pay, terms, and conditions when there was no National Minimum Wage in Ireland and little by way of a floor of employment rights. Until 2000, the JLC system was the only statutory minimum wage system in Ireland.

A National Minimum Wage Commission was established to study the issues around the introduction of a NMW. The Commission (1998:36) considered that "a radical assessment of the role and function of the JLC system will have to take place in the light of the Commission's recommendation to introduce a national minimum wage." However, no such review was undertaken and when the NMW was introduced the JLC system was retained and unchanged.

Despite some reforms introduced since then, only a few functioning JLC's now operate. The reality is that the current structures and operation of the JLC mechanism continues to attract significant opposition from employer bodies in sectors such as in retail and hospitality, amongst others. We see little prospect of employers in these sectors being attracted or incentivised to participate in them.

The operation of the JLC's and successive reform initiatives has failed to secure the greater involvement of all within these sectors with all having equal input but with a critical policy emphasis being placed on both long-term sustainability issues and of the need to maintain competitiveness.

The future role and relevance of the JLCs and the capacity to engender employer support for them has also been eroded given the extent of other labour regulation introduced or pending. The introduction of paid Statutory Sick Leave (SSL) and the pending introduction of pension auto enrolment in the private sector are prime examples with the introduction of a Living Wage (to replace the NMW) still very much in prospect.

Some observers have argued that the State should promote collective bargaining, in the 'public interest' by way of multi-employer agreements including on a sectoral basis. As a result, if employers refuse or abstain, the law should in their view be utilised to ensure sectoral standard setting. However, our experience in Ireland is that these sector agreements can only be successful where they are established by voluntary agreement between employers and Trade Unions who are representative of the majority interests in their sector.

We question the continued relevance of JLC's in this context as the traditional space occupied by JLC's has been filled and indeed in some instances enhanced by significant changes in labour market regulation and the adoption of new enforceable rights and labour standards. (e.g. Statutory Sick pay, and pending introduction of Pensions Autoenrollment. and the prospective Living Wage etc)

We can predict that as these measures are introduced because of Government policy, it can still be expected that trade unions will continue to pressure the JLC's at sectoral level to allow for better terms to be agreed and applied at levels in excess of these new legal minima.

6. What are your views on a proposal to have a Good Faith Engagement process at enterprise level which would involve a single mandatory meeting between an employer and a trade union?

It should be noted that the changes introduced by the Industrial Relations (Amendment) Act 2004 along with the adoption of the enhanced Code of Practice on Voluntary Dispute Resolution (SI 139/2004) including new anti-victimisation rules, were intended to enhance the effectiveness of processes already then in existence under the original 2001 Act and the Code on Voluntary Dispute Resolution, SI 145 of 2000. The basic purpose of the 2001 Act was to provide a procedure for resolving disputes, where collective bargaining arrangements were **not** in place and where voluntary procedures had not been followed or were not followed in good faith.

Amongst the range of changes brought about in 2004, included a removal of the requirement for the Trade Union to prove that the Employer had failed to observe a provision of the Code of Practice "***in good faith".*** However, the good faith ethos was replaced by the inclusion of a breach/exhaustion of the timeframes as an enabling provision. Alternatively, the then LRC had to indicate that no further efforts on its part would achieve a resolution of the dispute. In general, the number of procedural steps were reduced, and the time frame was also reduced to obtain a binding determination from the Labour Court.

Accordingly, if a principle of 'good faith' engagement was to be introduced to have relevance to proceedings under the Industrial Relations (Amendment) Act 2001-2015, this would necessitate an unwinding of the restrictive timeframes allowed for local engagement and before the WRC to allow for more realistic timeframes in circumstances where the potential for meaningful progress is being explored by the parties. This should repeal the present inclusion of a breach/exhaustion of the timeframes as an enabling provision.

In more general terms, in employment relations the phrase "good faith" is often linked to the word "bargaining" and indeed to obligations on employers to engage with Trade Unions or to facilitate employees having access to external representatives. It leads to an articulation of the circumstances when 'good faith' must be practiced, the relationships where good faith is required and the consequences of non-compliance with 'good faith obligations.

This would represent a fundamental change to our IR system and in our view is best articulated by way of non-statutory guidance to the parties through the development of a voluntary code of practice for this purpose, developed with the support of the WRC.

In our view, where the **validity of a request is contested by the employer**, the Labour Court could have a role in assessing this as part of any decision on the admissibility of the request. **Ultimately, an organisation that applies a market competitive remuneration policy (and progressive HR practices) should be permitted to apply for an exemption from any proposed GFE obligations.**

Similarly, for the avoidance of doubt, it should be clarified that the prospect of GFE should not apply in organisations where it is the practice of the employer to engage in collective bargaining with a trade union irrespective of whether a specific grade, group or category which may be the target for membership of that same or any other union, is in fact not unionised.

This would be consistent with the general approach of the LEEF Report which helpfully confirmed that in the promotion of good faith 'engagement' between parties, this is **not** to compel collective bargaining on the employer or would require the parties to reach any outcomes or agreement.

In practical terms, where a Trade Union makes a GFE request on an employer, there should be a **minimum 3-year preclusion** on any further GFE request that can be submitted by any Trade Union against that Employer in respect of any grade group or category.

The form of engagement at enterprise level must continue to reflect the diversity of requirements, culture and structures that already exist, whether through information and consultation mechanisms that are determined locally or through voluntarily agreed collective bargaining arrangements between employers and employees and Trade Unions where they represent such employees.

In this context, there must also be a stipulation that existing internal dispute resolution or problem-solving procedures normally used in the organisation for resolving issues of concern of the type being cited in pursuit of a GFE request, are fully exhausted in the first instance.

Worryingly, it seems to Stratis, that in contrast to the foregoing, the desire to promote collective bargaining is predicated on the assumption that collective bargaining is the only means through which employees can secure fair terms and conditions of employment.

This suggests that trade unions wish to continue to practice 'voluntarism' in areas where they are strongest and create a highly regulated space in areas of the private sector where employers could be compelled to engage in collective bargaining. The mechanism of achieving further EU regulation through the focus on adequacy of minimum wages by ensuring commitments on the promotion of collective bargaining is intended to bring about an outcome where such regulation would supersede the Irish Constitution.

We are concerned that the principle of subsidiarity is being undermined in this instance and the autonomy of collective bargaining arrangements is being tested as the EU has no competence to introduce a binding legal instrument on minimum wage levels or on collective bargaining and the representation of workers and employers' interests.

In Ireland, we have many examples of multinational employers who have a direct engagement model and are market leaders in their approach to remuneration. Whilst those multinationals may have little to fear from any policy objective of ensuring minimum wage adequacy, those multinationals, will be concerned if, because of the Directive, or as an outcome to the current consultation, we see efforts to promote collective bargaining being given primacy over their long-established mechanisms for engagement with their staff.

We would also argue that the recommendations to Government in the LEEF Report, about the proposed introduction of GFE, which would bring about legal obligation on the employer to engage, in the absence of collective bargaining, were framed in the absence of the current significant and pending threat to the Irish economic model as a result of the dramatic changes to the international trading arrangements and increases in tariffs in 2025. It therefore should be set aside or at least reviewed in the context of our arguments (see reply to Question 14) that any consideration of an action plan to 'promote' collective bargaining, should only be addressed in the context of the significant opportunity and need to address the overdue potential for industrial relations reform as part of a balanced approach.

In summary,

- A percentage of a grade, group or category should not be entitled to change the engagement model in an organisation.
- There must be a requirement for a double lock, but at much higher thresholds to those provided for information and consultation purposes, as per the Employees (Provision of Information and Consultation) Act 2006, to trigger any request for a change in the engagement model in an organisation.
- Where Employers can demonstrate that their overall remuneration is in line with a basket of comparable employments, they should have no such engagement obligations enforced on them.
- There should be only one request by any Union in an organisation within a 3 Year period in respect of any Grade, Group, or category.
- **The internal dispute resolution or problem-solving procedures normally used in the organisation for resolving issues of concern of the type being cited in pursuit of a GFE request, must be fully exhausted in the first instance.**

7.Do you have other views in relation to how negotiations between social partners on wages could be promoted and facilitated?

Consistent with the principles established by the ILO, collective bargaining should be carried out voluntarily, freely and in good faith. The parties should be free to decide if they wish to engage in bargaining, or not, and there should be no interference from the authorities in their decisions to do so. The principle of good faith implies that the parties who freely and voluntarily are willing to engage in the practice of collective bargaining make every effort to reach an agreement, conduct genuine and constructive negotiations, avoid unjustified delays in negotiations, respect agreements concluded and are applied in good faith, and are given sufficient time to discuss and settle collective disputes.

However, in Employment Relations the phrase "good faith" is often linked to the word "bargaining" and indeed to obligations on employers to engage with Trade Unions or to facilitate employees having access to external representatives. It leads to an articulation of the circumstances when 'good faith' must be practiced, the relationships where good faith is required and the consequences of non-compliance with 'good faith obligations. This would represent a fundamental change to our IR system.

The introduction of collective bargaining for a minority or even a small group of workers impacts everyone in the workforce and the view of the totality of non-union workers are all too often not properly considered in any dispute resolution process, particularly where they are a majority of the workforce as a whole or even as part of the grade, group, or category of workers at issue but where only a minority have chosen to pursue issues.

8.Do you have views on how the social partners could better access the information required to engage in negotiations?

Where parties already voluntarily entered a collective bargaining relationship, they are of course free to frame any collective labour agreement on issues that are of shared importance to them and in the process to adduce and share all and any relevant information that is helpful to them that process. However, in the absence of any collective bargaining arrangements, where a trade union is seeking to pursue a relationship with the employer through collective bargaining and where it is not the practice of the employer to so engage, there is considerable opportunity for dispute.

The Industrial Relations (Amendment) Acts 2001-2015, or the so called 'right to bargain' legislation, has effectively been abandoned by Trade Unions in Ireland with very few cases since the last set of changes in 2015.

We recognise the acute sensitivities that arise in this area for all parties. It is not currently within the remit of either claimants or the Court to conduct agreed assessments of market information. Stratis would agree that the appointment of 'technical assessors' may be of some assistance in verifying data on remuneration, but it remains the case that Unions have shown little interest in a significant piece of legislation that is not replicated elsewhere in the EU or the UK.

However, the terms of reference applicable to such 'technical assessors' would be critical and e.g., including, depending on the facts in dispute, a need to reflect any assessment of economic and comparator data the appropriate quartile for comparative purposes, the present economic, commercial, competitive, and trading performance of the organisation and criteria needed for future sustainable commercial success.

However, the special position of the MNC sector, where most have market leading remuneration and HR practices, and policies must be respected in the design of any 'assessment' process under the Industrial Relations (Amendment) Acts 2001-2015. Nothing should be done that negatively impacts on sustainability and viability. This requires that:

- The field for comparison purposes deserves discussion with the parties and such exercises should reflect the relevant sector comparisons and not just those quoted by either side.
- Given the importance of the issues for the parties, any draft assessment of data by a 'technical assessor' should be shared with the parties for comment before being finalised for submission to the Court for its consideration.
- There will also be important matters of confidentiality and of data protection arising here to be considered in framing the status of any report by an 'independent assessor.'
- There is also a need to clarify the standing of any such report as part of further proceedings before the Labour Court e.g., is such a report for information purposes only, or is it to have more of an 'advisory' status for consideration by the Court, but which the Court can either accept, reject, or vary in its considerations of the issues and having heard from the parties?
- Finally, in our view, those designated as 'technical assessors' should be of sufficient standing, industry experience and expertise, including in employment relations, to enable them to carry out such work, with the support of the parties.

9. *Article 4 of the Directive on Adequate Minimum Wages states:*
With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall:

(c) 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;

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

Ireland already has comprehensive measures and protections in place against acts which could be calculated to cause the dismissal or otherwise prejudice a worker by reason of participation in union activities. These are already significant and dissuasive of noncompliance.

Under Section 8 of the Industrial Relations Act 2004, victimising an employee on account of the employee being or not being a member of a trade union or an excepted body or the employee engaging or not engaging in any activities on behalf of a trade union or an excepted body is illegal. Under Section 9 of the Act, the Workplace Relations Commission (WRC) may direct that the conduct which is the subject of the complaint should cease and make an award of compensation not exceeding 2 years remuneration.

The Unfair Dismissals Acts 1977 to 2007 provide specific protection to employees who are dismissed because of membership of a trade union or excepted body, or because of trade union activity. Section 6 of the Acts provides that where a dismissal (including constructive dismissal) is caused wholly or mainly by such membership or activity, it will automatically be deemed to be unfair and may result in the employee being reinstated in his or her position with the employer or being awarded damages at a level of up to two years' remuneration.

Further protections are afforded by the Unfair Dismissals Acts in the case of dismissals effected in the course of lockouts or strikes, or where the employee in question was not permitted to return to work on the same terms and conditions of employment. Under Section 6 (2) (a) of the Unfair Dismissal Act 1977, as amended, the dismissal of an employee will be deemed to be unfair if it results wholly or mainly from an employee's membership or proposed membership of a trade union or engaging in trade union activities, whether within permitted times during work or outside of work.

Importantly, there have been very few cases pursued by trade unions under the codes of practice or in relation to unfair dismissal related to trade union membership or activity, which suggests that the rhetoric of the need for additional protection is unfounded.

In addition to the protections aimed at trade unions and excepted bodies referred to above, workers' organisations established pursuant to European Directive enjoy a variety of protections in Ireland, including guidance on the manner in which employee representatives may be appointed. The Code of Practice on Duties and Responsibilities of Employee Representatives 1993 (under Section 42 of the Industrial Relations Act 1990) sets out guidance for employers, employees and trade unions on the duties and responsibilities of employee representatives, and the protection and facilities which should be afforded them to enable them to carry out their duties in an effective and constructive manner.

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There are severe penalties for penalisation of employee representatives, including the prohibition of dismissal or any unfavourable change to his or her conditions of employment or any unfair treatment, or any other action prejudicial to his or her employment. Any breach of these provisions constitutes a criminal offence under Irish law.

Under Article 2(1) of ILO Convention 98, workers' and employers' organisations enjoy adequate protection against any acts of interference by each other or each other's agents or members in the establishment, functioning or administration.

Under Irish law, trade unions enjoy generous protection against such interference, as compared with other countries. Unions enjoy wide discretion as to how ballots for industrial action are conducted under Section 14 of the Industrial Relations Act 1990.

A breach of section 14 is virtually unchallengeable by an affected employer. An employer who has a sense that the standards required of unions and their members have not been adhered to has no remedy under the Act. An employer may even be on notice from an employee and union member that they are being victimised in some way by their union colleagues, and they will still have no remedy under the Act.

The 1990 Act is also silent on how long the mandate secured by a ballot should last. The only definitive requirement which a union must fulfil regarding employers is to provide 7 days' notice of industrial action.

It is true that there may be other consequences for the union and its members for failure to conduct a ballot in line with section 14, including the possibility that the rights and immunities provided elsewhere in the Act may be jeopardised by non-compliance. However, because the rights in section 14 are conferred on union members, with no real means of independent assessment, these cases simply do not arise in practice. The party which is most likely to be negatively impacted by a failure to follow the procedures outlined in section 14 is the employer, yet they are powerless under the 1990 Act.

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

Ireland has an extremely robust framework of legislation and codes of practice to ensure that the protection principles espoused in the European Convention on Human Rights are protected and promoted. For example, matters of employer incentivising abandonment of trade union representation and collective bargaining rights, would of course be in breach of S.I.463/2015 Industrial Relations Act 1990 (Code of Practice on Victimisation) (Declaration) Order 2015.

We have detailed anti victimisation protections under S.I.463/2015, the Code of Practice on Victimisation, which prohibits any unfair or adverse treatment of employees including any unfavourable change in conditions of employment or acts of commission or omission that adversely affect the interests of an employee for engaging in trade union membership or activity.

Critically the code prohibits victimisation arising from an employee's "membership or non-membership, activity or non-activity on behalf of a trade union or excepted body". Importantly, there have been very few cases pursued by trade unions under the code, which suggests that the rhetoric of alleged employer victimisation and/or intimidation is very different to the reality.

Victimisation is defined as "any adverse or unfavourable treatment that cannot be justified on objective grounds", and provides examples of unfair or adverse treatment, stating that they may be acts of "omission or commission", including "any unfavourable change" in an employee's conditions of employment or "acts that adversely affect the interests of the employee". Remedies are available for employees who wish to invoke the Code through the Industrial Relations (Miscellaneous Provisions) Act 2004.

11.**Do you have views as to whether workers are sufficiently protected by law, including Codes of Practice, from acts of discrimination if they wish to organise or join a trade union?**

In addition to the issues arising regarding collective bargaining and union recognition, some parties have advocated for more protection for workers if they wish to organize or join a trade union.

The Irish courts have held on several occasions[1] that the right to freedom of association of employees does not create a legal obligation on employers to negotiate with their union or encompass a right to collective bargaining. Indeed, it is also worth noting that in the 2007 Supreme Court case of Ryanair v Labour Court[2], Justice Geoghegan J even opined that employers may have a right not to be compelled to recognise a trade union, or a right to operate a non-unionised enterprise.

Whilst employers respect the right of freedom of association, they equally expect their reciprocal right of disassociation to be respected as confirmed by the Irish Constitution. The constitutional right of association carries with it significant protection which has been further bolstered by a range of legislative measures. However, the right does not imply any duty on the employer beyond respecting that right in itself. It does not extend to obliging the employer to negotiate with any association which may be formed by employees

Apart from the matter of asserting a right to collective bargaining related issues have arisen in the absence of a legal requirement that workers be entitled to trade union representation in the context of e.g. individual grievance and disciplinary issues.

As things stand, under Irish law, if an employer refuses to allow representation, or places practical obstacles in the way of employees securing appropriate representation, a range of consequences may follow:

- The Labour Court may intervene, as it has done on occasions, to ensure that the Code of Practice on Grievance and Disciplinary Procedures is properly complied with.
- The Code provides examples of "employee representative" and includes "a colleague of the employee's choice and a registered trade union" within those examples.
- Failure to allow for appropriate representation may also result in a challenge to the compliance of the process with the principles of natural justice and fair procedures as protected by the Constitution of Ireland, 1937.
- There have been very few cases pursued by trade unions including under Codes of Practice, regarding alleged acts of discrimination where they wish to organise or related to union membership, which suggests that the rhetoric of alleged employer discrimination is very different to the reality.

[1] See Abbott and Whelan v the Irish Transport and General Workers Union (1982) 1 JISLL 56
[2] [2007] 4 IR 199 [35]

- Finally, the Labour Court is likely to find that any dismissal based on deficient procedures, including the absence of proper representation, is unfair, as they are empowered to do under section 5 of the Unfair Dismissals (Amendment) Act 1993.

12.*Article 4 of the Directive on Adequate Minimum Wages states:*
With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall:

(d) for the purpose of promoting collective bargaining on wage-setting, 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.

Do you have views as to whether employers are sufficiently protected in Irish legislation against acts of interference where they wish to participate in collective bargaining?

Our response to this point should be read in conjunction with our comments under questions 10 and 11 above. Ireland has an extremely robust framework of legislation and codes of practice to ensure that the protection principles espoused in the European Convention on Human Rights are protected and promoted. For example, matters of employer incentivising abandonment of trade union representation and collective bargaining rights, would of course be in breach of S.I.463/2015 Industrial Relations Act 1990 (Code of Practice on Victimisation) (Declaration) Order 2015.

We have detailed anti victimisation protections under S.I.463/2015, the Code of Practice on Victimisation, which prohibits any unfair or adverse treatment of employees including any unfavourable change in conditions of employment or acts of commission or omission that adversely affect the interests of an employee for engaging in trade union membership or activity.

Critically the code prohibits victimisation arising from an employee's "membership or non-membership, activity or non-activity on behalf of a trade union or excepted body".

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

Under Article 4 (1)(b) of the Directive (EU) 2022/2041 on Adequate Minimum Wages it specifies that one of the aims in increasing collective bargaining coverage should be to:

"Encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage setting".

This provision, as written, is clearly intended to operate where collective bargaining exists between the relevant parties. The reference to social partners being able to negotiate on an equal footing 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 and in particular Convention 98 on the Right to Organize and Collective Bargaining.

However, the focus of the question for consultation must be read in the specific context of the 'voluntary' nature of collective bargaining. The absence of a legal obligation to engage with a particular trade union, or indeed any union, is entirely consistent with ILO conventions on freedom of association. The principle of free and voluntary negotiation in collective bargaining, that the voluntary negotiation of collective agreements, and therefore the autonomy of the bargaining partners, is a fundamental aspect of the principles of freedom of association.

The standards and principles which emerge from the ILO Conventions, Recommendations and other instruments on the right to collective bargaining have been repeatedly summarised in the International Labour Review3 , which includes an analysis of the voluntary nature of collective bargaining:

"In view of the fact that the voluntary nature of collective bargaining is a fundamental aspect of the principles of freedom of association, collective bargaining may not be imposed upon the parties and procedures to support bargaining must, in principle, take into account its voluntary nature; moreover, the level of bargaining must not be imposed unilaterally by law or by the authorities, and it must be possible for bargaining to take place at any level."

Efforts to introduce compulsory measures on access would be fiercely resisted by employers and especially so, where it is not their practice to engage in voluntary collective bargaining. Allowing for 'access' to the workplace, in the absence of voluntary collective bargaining having already been freely established and by agreement, in the case of an employer who has not given permission, would represent a serious punitive challenge to the private property rights of Employers over their business interests. Such 'access' issues if pursued are also likely to raise fundamental issues of compliance with GDPR requirements and create heightened risk and vulnerabilities to IT System integrity.

We respectfully argue that such 'access' is not required or permissible, it would undermine the property rights of employers and if granted, it would also seriously undermine the voluntary nature of collective bargaining as set out under ILO C98.

14.**Do you have views on what measures could be introduced which would promote employer engagement in collective bargaining?**

In our view, in any consideration of an action plan to 'promote' collective bargaining, the significant opportunity to address the overdue potential for industrial relations reform must also be addressed as part of a balanced approach.

The current primary focus of the consultation on issues around collective bargaining will mainly be a matter for the Private Sector along with efforts to boost collective bargaining coverage including through sectoral agreements such as the JLC's. How these principles are articulated is of concern to employers generally and to the FDI sector in Ireland. FDI companies account for 80% of corporation tax receipts and contribute significantly to Irish exports. We also know from the CSO quarterly national accounts that information and communication' and 'industry (excl. construction)' are the two sectors most dependent on exports and are most at risk of any reduction in international trade with potential negative impacts on both output and employment. We already know that foreign direct investment in Ireland decreased by

[3] See International Labour Review, Vol. 139 (2000) No.1 B Gerignon, A Odero and H Guido

€50.3bn to €1.3tn in 2023. Whilst total permanent full-time employment in agency assisted companies operating in the industrial and services sector was 504,831 in 2024 and increased by 1.4% or 6,800, on 2023, we are seeing a slower rate of job growth and generation than previously given the changing international context for business, geopolitical uncertainty and the cost of doing business for both indigenous and FDI businesses.

Given the importance of FDI investment and of our trading relationships to many indigenous exporters, at a time when these relationships and even our potential attractiveness as a location for investment is under scrutiny if not threatened, as a result of uncertainty in the trading relationships between the US, and Ireland as part of the EU, it would be reckless to introduce compulsions to mandate employers to enter into 'good faith' engagement or to prioritise collective bargaining arrangements over other forms of engagement at enterprise level.

The voluntarist approach to industrial relations in Ireland, is foundational and at its core is the premise that the State does not seek to impose a solution on the parties to a dispute but will, where appropriate, assist them in arriving at a solution. Whilst the evolution of individual employment rights and jurisprudence has chipped away at its edifice, the voluntarist ethos has served all parties well for many years.

If changes are to be considered based on new design principles, we must be clear that voluntarism cannot end for one side of industry or just in the private sector. We should not be adding to the obligations on employers in the private sector (at enterprise or sector level) and to have these as 'add ons' to an otherwise 'voluntarist' IR system where Trade Unions remain free to pursue issues in other parts of the private and public sectors without any effective oversight or compliance and under existing outdated rules on the conduct of industrial relations and possible industrial action.

We cannot have changes being considered to collective bargaining, to its 'promotion' or to trade union recognition which might increase workers' rights or the level of compulsion on employers in the private sector and to have these bolted on to an otherwise 'voluntarist' IR system.

There remains an urgent need to introduce significant systemic reforms to our industrial relations systems, which the LEEF process failed to address and remain outstanding concerning how our dispute resolution bodies function and how trade disputes are regulated.

At Stratis, we believe that this will show to employers, that the Government in producing any action plan to promote collective bargaining is keen to ensure a balanced outcome which will ensure that our IR system is reflective of the modern needs of employers and workers. The following are examples of the areas that need to be considered as part of a wider review (a non-exhaustive list is below):

- **Diverse models of engagement must be respected**- The important role and function of trade unions in society and at enterprise level is fully acknowledged and through voluntarily agreed arrangements for collective bargaining but the importance of direct engagement for most firms. is a fact often ignored by our third-party system. An engaged workforce is a competitive advantage achieved through different models. However, our workplace relations system needs to acknowledge that where employers are implementing progressive HR practices with market based and competitive remuneration, and practice direct engagement, they should not face a default outcome to adopt a collective model of representation from any processes (including from the Labour Court as is commonplace under S.20(1) of the Industrial Relations Act, 1969).

- **Updated rules on Balloting & Industrial Action are needed** - The legal protection for industrial action should be contingent on a statutory requirement to exhaust IR procedures before a ballot for industrial action can be taken or action legitimately initiated. Currently industrial action is unfettered, even unofficial Industrial action is not unlawful, and no restrictions apply on proportionality of any official industrial action taken. Picketing currently can take place at any location where the employer carries out business and not necessarily where the employees in question carry out their duties.

- **Picketing** - Picketing should be confined to the place where the employees work. Furthermore, there is no requirement for a 'cooling off period' to allow for any reflection, exchange of new information or final intervention.

- **Notice of Industrial Action** - The notice period for industrial action in law is still only 7 days, after the completion of a ballot and there is no requirement for the notice to the employer to contain explicit details of any proposed action(s) and the period(s) of such action. There is no requirement for a ballot for industrial action to have an 'expiry date' or to provide clarity of the type and duration of the proposed action on the ballot paper. The introduction of a requirement to utilise and exhaust procedures prior to any ballot for industrial action and the serving of notice of industrial action with a role for a dedicated Division of the Labour Court to scrutinise the application of such procedures to ensure compliance is long overdue.

- **Conduct of Ballots** - Stratis believes the requirement for protected action should be raised from a simple majority of those voting to a higher threshold of there being both at least a 50% turnout of those eligible to vote and the ballot being supported by over 50% of the balloted workforce. Stratis would argue that an employer of any union members who will be given entitlement to vote should receive a sample voting paper (and a sample of any variant of that voting paper) within a specified period before the opening day of the ballot.

- **Immunities** - The existing rules are ludicrously out of date and ballots for industrial action must be open to independent external scrutiny. The availability of the immunities for trade unions must be updated to reflect such revisions and those immunities should not be available to any union acting outside of these suggested changes. This shows that any action plan to promote collective bargaining cannot be in isolation and must address more progressive requirements concerning dispute resolution and the regulation of industrial action. It must be a policy goal that where legal immunities are to be availed off, they must come with greater responsibility and accountability.

- **Status of Labour Court Recommendations** - The role that the Labour Court can play in bringing finality to industrial relations disputes (disputes of interest) between parties through arbitration should be an increasingly important part of its remit. It may also be time to consider that in most IR cases, that a default position is adopted where the Court's recommendation shall be deemed to be binding on the parties, unless there is a compelling set of circumstances.

- **Essential Services** - Across the public service, despite successive public service agreements, in disputes in essential services, there has been a failure to strengthen the statutory requirement to exhaust IR procedures, up to and including recourse to the WRC and Labour Court, to provide for cooling off periods prior to the taking of a ballot for industrial action and before a dispute can occur.

- **Status of the Pre-Entry Closed Shop –** Whilst the post entry closed shop has been found to be unconstitutional, it is highly likely that the pre-entry closed shop is also unconstitutional and is also most probably a breach of competition law. Our industrial relations laws should be amended to deal with this reality.

- **Refreshing a Recognition Mandate –** If changes are to be made to our system of collective bargaining and an action plan is to be adopted to promote collective bargaining, which raises the bar on employers, then as part of any balanced reflection of changes must be the need to address the continued recognition of a Trade Union by an employer where that Union has lost its mandate.

- **Multiple Union Sites –** Significant issues can and do arise for existing employers, who have established collective bargaining arrangements with unions because of inter union rivalry or the activities of breakaway groups, or by those unions who may not be affiliated to the ICTU. Any promotion of collective bargaining must also encourage the consolidation of the number of negotiating bodies within a company as being compatible with the requirements of orderly industrial relations, and as a means of supporting established negotiating structures within a company and decision making by employees.

- **Status of Collective Agreements –** Whilst a collective agreement is enforceable through the individual contract of employment where it is included, the status of collective agreements should be made directly enforceable.

Renewal of our Industrial Relations Framework needs urgent attention.

Our IR framework needs to be more 'fit for purpose' for the current and future requirements of our modern economy. Change must only be considered with a full understanding of their real implications rather than as a response to a growing 'populist' agenda. We have a strong value proposition to continue to encourage multinational employers to locate in Ireland including a highly articulate and educated workforce, and the ability of employers to work with employees directly or via representative mechanisms as appropriate. However, we must recognise that this model is currently under threat considering international tariff wars, uncertainties, and trade tensions on a global scale.

The voluntarist system has served us well and instead of accelerating its demise through the prospective introduction of GFE by imposing a legal obligation on the employer to engage., we believe the voluntarist system should be strengthened as part of a renewed framework developed through National Social Dialogue and engagements with Government between representatives of employers and representatives of trade unions on strategic policy and direction, building on the work of the Labour Employer Economic Forum (LEEF) over recent years.

However, if we are to overhaul our IR system in a more fundamental way, this requires a more structured agenda and programme of work beyond that of just an action plan to promote collective bargaining. Indeed, Stratis would argue that, there is a strong case to be made for the establishment of an oversight type body at national level to oversee any action plan as may emerge to promote collective bargaining but that this must also oversee industrial peace and good industrial relations, Such oversight, could make an important contribution to finding a pathway to resolving disputes and in a manner, which is also supportive of the role of the WRC and the Labour Court.

'Add On' Solutions Will not Work.

The important role and function of trade unions in society and through voluntary collective bargaining at enterprise level is fully acknowledged by Stratis. Campaigns championing 'decent work,' on tackling the housing crisis, childcare issues and climate change are a few stand out examples of the contribution and influence of organised labour. There are also many examples of enduring relationships between individual employers and unions fashioned through voluntarily agreed collective bargaining arrangements.

However, it needs to be recognised that if 'Good Faith Engagement' (GFE) is legislated for it will bring the much valued and respected tradition of 'voluntarism' to an end in Irish industrial relations as it will impose a legal obligation on the employer to engage. Stratis considers it is also reasonable to predict, that as GFE, will not satisfy the trade union movements long held ambitions for enhanced collective bargaining rights and that ultimately significant parts of the trade union movement will cast GFE aside for its 'failure to deliver' and will campaign to deliver 'good faith bargaining' or something similar.

Amidst the focus on GFE, arising from the recommendations of the LEEF Report in 2022, it is important to recognise that GFE, were it to be introduced, will not contribute to boosting the collective bargaining coverage rate, given the threshold of 80% collective bargaining coverage under the Directive on Adequate Minimum Wages in the European Union which requires a member state with coverage of less than this threshold to establish an action plan to promote collective bargaining by the end of 2025.

If collective bargaining is to be actively promoted, it remains unclear if this will be within the design principles of the Industrial Relations (Amendment) Acts 2001/2015, or not. That legislation did **not** give rise to mandatory union recognition or a right to collective bargaining but allowed unions/worker representatives to have pay, terms and conditions of employment, and dispute resolution procedures addressed in a non-union employment where it is not the practice of the employer to engage in collective bargaining.

If not, this may give rise to a need to repeal that legislation in its entirety. What cannot be allowed to happen, is that we have new arrangements being introduced, which would increase the levels of compulsion on employers, whilst leaving the 2001/2015 Acts in place and while Trade Unions remain otherwise free to ignore procedural arrangements should they elect to do so and to pursue issues in other parts of the private and public sectors without any effective oversight or compliance and under existing outdated rules on the conduct of industrial relations and possible industrial action.

Many employers believe that the balance on employment legislation has been tipping in the wrong direction over recent years, when we should be doing everything to retain labour market flexibility
and support the capacity of Irish business to retain and create employment in the face of the many economic, trade and other geopolitical challenges facing the economy. When policy changes are envisaged in these sensitive areas, they must be evidence based and considered for the impact they will have on competitiveness and our reputation as a preferred location for doing business. All elements of our industrial relations framework, including for the conduct of collective bargaining and its 'promotion' should not detract from these efforts as Ireland seeks to chart its way ahead over the coming years amidst a growing uncertain trading environment.

END