Final Report of the LEEF High Level Working Group on Collective Bargaining

1. Introduction

The Tánaiste and Minister for Enterprise, Trade and Employment Leo Varadkar TD announced the setting up of a High-level Working Group under the auspices of the Labour Employer Economic Forum (LEEF) to review collective bargaining and the industrial relations landscape in Ireland on 30 March 2021. The group was set up to review collective bargaining and the industrial relations landscape in Ireland.

The Tánaiste nominated Professor Michael Doherty, School of Law and Criminology, Maynooth University as Chair of the group.

At its first meeting, the members of the group agreed to focus this review on the below terms of reference:

- Examine the issue of trade union recognition and the implication of same on the collective bargaining processes.
- Examine the adequacy of the workplace relations framework supporting the conduct and determination of pay and conditions of employment, having regard to the legal, economic, and social conditions in which it operates.
- Consider the legal and constitutional impediments that may exist in the reform of the current systems. In doing so, the group will need to be cognisant of the individual employment rights frameworks and the EU context. It may wish to consider other models of employee relations and pay determination established in other Member States.
- Review the current statutory wage setting mechanisms and, where appropriate, make recommendations for reform.

Membership of High-Level Group on collective bargaining

Chair – Professor Michael Doherty, Maynooth University

Employer representatives:

Mr Danny McCoy, Ibec

Ms Maeve McElwee, Ibec

Mr Tom Parlon, CIF

Employee representatives:

Mr Kevin Callinan, Fórsa

Mr Joe Cunningham, SIPTU

Ms Patricia King, ICTU

Government nominees:

Professor Bill Roche, UCD

Mr John Shaw, Department of the Taoiseach

Ms Clare Dunne, Department of Enterprise, Trade and Employment (until 31.12.2021)

Mr Dermot Mulligan, Department of Enterprise, Trade and Employment (from 1.1.2022)

The Group's first meeting was held on the 16th April 2021 and the Group have met either virtually or in person on 11 occasions. The Group reported back to the Tánaiste in July 2021 (Appendix 1), October 2021 (Appendix 2) and in December 2021 (Appendix 3).

A Public Consultation Process seeking views on proposals being considered by the High-Level Group on Collective Bargaining was held over a three-week period from the 26 May 2022 to the 16 June 2022. Nine Submissions were received in that period.

2. The Context

The Group was tasked with facilitating the examination of the adequacy of the workplace relations framework in supporting the conduct and determination of pay and conditions of employment having regard to the legal, economic, and social conditions in which this framework operates. The Group, of course, largely conducted its work during a global pandemic, unprecedented within living memory. It is clear that a feature of the country's swift response to the impacts of the Covid-19 was the prominence of an active and meaningful form of tripartite social dialogue, through the Labour Employer Economic Forum (LEEF). From the outset, both the ICTU and Ibec were directly involved with the Government in designing a series of work-focused measures that were designed to mitigate the economic and social impacts of the pandemic. This tripartite approach very much grounded the work of the Group.

The Covid-19 crisis also had a significant impact in revealing the true value to society of many lower-income, higher-risk jobs in retail, hospitality, healthcare, social care, public transport, and other services. People working in these jobs were in the vanguard of the State's response to an unprecedented public health emergency and from the outset it became apparent that individuals undertaking these roles were 'essential workers'. The Group carefully considered, throughout its deliberations and in making its recommendations, whether the societal recognition of the essential nature of many of these jobs was adequately reflected in the everyday work experience.

The Group was cognisant of the growing importance to business internationally of the Environmental, Social and Governance (ESG) agenda, and the international movement towards a stakeholder value model of the corporation, which recognises that businesses exist to serve multiple stakeholders—including customers, employees, communities, the environment, and suppliers—in addition to shareholders.[1] This model clearly envisages that business leaders and individual companies engage with the needs of their employees as they seek to continue grow the economy in a sustainable manner.

The Group was also asked to examine the issue of trade union recognition including any implications it may have on our collective bargaining processes. In its consideration of the legal and constitutional impediments that may exist in the reform of the current systems, the Group was asked to be cognisant of individual employment rights frameworks and the EU context, including models of employee relations and pay determination established in other Member States.

[1] See, for example, https://corpgov.law.harvard.edu/2020/09/14/the-stakeholder-model-and-esg/.

The Group proceeded in its work on the basis that it was not possible to describe *precisely* the constitutional position in terms of collective bargaining rights, or trade union recognition. The Group heard, in the course of its deliberations, from Labour Law and Constitutional Law experts. During the course of its work, the Group also received some significant legal guidance from the Supreme Court (the NECI case; see below). The Group considered carefully the principal legislation relating to collective bargaining (the *Industrial Relations (Amendment) Acts 2001-2004*, as amended by the *Industrial Relations (Amendment) Act 2015*), and throughout its work the Group had access to expert legal views from the Department of Enterprise, Trade and Employment (DETE).

The Group was cognisant of models of employee relations and pay determination established in other EU Member States, but also considered developments in countries with common law traditions similar to Ireland, such as New Zealand and Australia.

The EU context (particularly proposed EU legislation) was of paramount importance to the Group's work. The European Commission adopted a proposal for a Directive on adequate minimum wages on 28 October 2020.[2] In June 2022, the European Parliament and the Council reached political agreement on the Directive, which, when formally approved by the co-legislators, will enter into force, and will need to be transposed by Member States into national law within two years from that date. A central theme of the proposed Directive is the emphasis on the key institutional role that *collective bargaining* plays in ensuring adequate minimum wage protection for workers; Recital 19 states that 'it is essential that the Member States promote collective bargaining, facilitate the exercise of the right of collective bargaining on wage setting and thereby enhance the wage setting provided by collective agreements to improve workers' minimum wage protection'. The proposed Directive notes that Member States with high collective bargaining coverage tend to have a low share of low-wage workers and high minimum wages. Therefore, the proposed Directive requires Member States with a collective bargaining coverage rate below 80% to adopt measures with a view to enhancing collective bargaining.[3] Importantly for the work of the Group, the proposed Directive sees an *interdependence* between statutory minimum wages and collective bargaining. Recital 18 states that 'strong and well-functioning collective bargaining together with a high coverage of *sectorial or cross-industry collective agreements* strengthen the adequacy and the coverage of minimum wages' (emphasis added).

In terms of its focus on collective bargaining, the Group notes that the obligations under the proposed Directive are for Member States to come up with action plans and frameworks to facilitate

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0682&from=EN.
[3] Ireland's current rate of collective bargaining coverage is approximately 34%.

collective bargaining, and support an increase in bargaining coverage, and that these (and any outcomes) will be subject to ongoing review. The focus of the Group's work has been to propose means by which plans and frameworks, developed by the social partners in conjunction with the State, can be put in place so that Ireland is well-positioned to meet its obligations under EU law.

The Group was asked to review the current statutory wage setting mechanisms and, where appropriate, make recommendations for reform considering the Supreme Court's ruling in the NECI case. The NECI judgment was issued on 18th June 2021, and the Supreme Court upheld the Constitutionality of the legislative framework underpinning Sectoral Employment Orders (SEOs) and confirmed its acceptance that the key objective of the legislation - maintaining industrial harmony - is a legitimate objective of a modern democratic state's ambition for supporting competitiveness by promoting and recognising high standards and qualifications.[4] The issue of trade union recognition is noted in the Supreme Court judgement in the NECI case, with a European context for this specifically remarked upon at para. 139 through reference to *Demir and Baykara v. Turkey*.[5] In this case, the European Court of Human Rights observed that the right to bargain collectively with an employer had, in principle, become one of the essential elements of the right to form and join trade unions, for the protection of interests set forth in Article 11 of the Convention. In the Supreme Court judgement, MacMenamin J. observes that collective bargaining is now seen as a recognised feature of the social market within the European Union. The Group has considered carefully the comments of the Supreme Court as part of its wider deliberations on collective bargaining.

The Group has been very mindful of Ireland's impending EU law obligations, described above. 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. A key legislative mechanism for supporting sectoral collective bargaining already exists in the form of the legislation establishing Joint Labour Committees (JLCs). However, while a minority of JLCs function well at present, the robustness and effectiveness of this statutory mechanism have been impacted by employer disengagement in relation to the operation of the JLC system in a number of sectors. The nature of the JLC system at present means that the non-participation by either side of industry renders an established JLC inoperable. The Group has considered the intention of the Oireachtas (as set out in the *Industrial Relations Acts 1946-2012*), and has carefully examined the 2021 establishment of a new JLC for the childcare sector. The Labour Court's review of JLCs (2018)

[4] *Naisiunta Leictreacht (NECI) V Labour Court & Ors* [2021] IESC 36.
[5] [2008] ECHR 1345.

concluded (anticipating to some extent the proposed EU Directive) that the evolving body of employment law does not obviate the need for sector specific engagement that is focused on the (joint) regulation of terms and conditions that fall outside of the scope of statutory regulation.[6] Equally, the Group considers that properly functioning JLCs can be an effective, evolving, and flexible system of sectoral regulation, that can contribute to the progressive development of different sectors of the economy, support more sustainable and inclusive high-quality employment, and also help to address other employment relations policy challenges. However, the Group has also been mindful to examine deficiencies in the existing JLC system, and to look for ways to improve the functioning of JLCs, so that the statutory system established secures the confidence of all participants.

The Group has focused throughout its operation on three key areas (identified in early deliberations, and clearly outlined in its interim progress reports):

1. JLCs: promoting mechanisms to increase sectoral coverage of collectively bargained terms and conditions.
2. Measures to improve the functioning of the procedure set out under the *Industrial Relations (Amendment) Acts 2001-2004* (as amended by Part 3 of the *Industrial Relations (Amendment) Act 2015*) to allow trade unions to represent members in relation to terms and conditions of employment, where the employer does not engage in collective bargaining with a trade union or excepted body.
3. A process to encourage and facilitate good faith engagement between trade unions and employers at enterprise level, where a trade union has organised members in the enterprise, but where the employer does not engage in collective bargaining with a trade union or excepted body.

In its final report the Group, mindful of its terms of reference (specifically, to 'examine the adequacy of the workplace relations framework supporting the conduct and determination of pay and conditions of employment'), has also examined the operation of enterprise level collective bargaining, where the employer engages with a trade union or excepted body.

[6] https://www.labourcourt.ie/en/publications/employment-regulation-orders/review-of-joint-labour-committees-master-version-finalt-report-003-002-.pdf.

4. Measures to improve the functioning of collective bargaining at enterprise level.

As noted above, the work of the group has been undertaken very much in the context of upcoming EU law obligations. However, the proposed Directive had not yet been passed into law at the time of writing of this report. There are some aspects of the proposed EU Directive, which the Group did not address (for example, measures on the awarding of public procurement and concession contracts, and easing the access of trade union representatives to workers). The Group recommends that any remaining issues of transposition should be addressed in a similar tripartite manner to those examined in this report.

However, the Group also emphasises that this report, and the recommendations contained herein, should not be considered as the end of a process, but as one element of what will be ongoing efforts to improve the system of industrial relations in Ireland, respecting the autonomy of the social partners, and to continue to build relationships of trust, confidence, and mutual respect between employers and workers and their representatives at all levels (national, sectoral, and local). These efforts should be focused on attempting to resolve any differences through structured engagement between the parties, in line with Ireland's voluntarist tradition, rather than through recourse to the adversarial common law system.

3. Joint Labour Committees

Principle One – Joint Labour Committees (set out in the Progress Update for the LEEF High Level Working Group on Collective Bargaining; Oct 27 2021).

The Group recognises that the legislative intention as set out in the Industrial Relations Act 1946 and updated in the Industrial Relations (Amendment) Act of 2012, is for the Joint Labour Committee (JLC) system to operate effectively as a mechanism for sectoral regulation of pay and conditions through agreement.

The Group acknowledges that the JLC system is not now functioning optimally in this capacity. In light of this, the Group will explore options to increase employer engagement with a modern, evidence-based and consensus- focussed JLC system, responsive to the economic environment, which can ensure this important sectoral bargaining mechanism operates effectively.

In a small number of sectors, JLCs operate as intended, and sectoral social partners engage to formulate Employment Regulation Order (ERO) proposals, which are put to the Labour Court, confirmed by the Minister, and laid before the Oireachtas. However, in many of the sectors in which JLCs have been established they are not functioning. There is employer opposition to the operation of JLCs in most sectors in which they are established for a variety of reasons, which have been clearly outlined in the formal reviews of the system.[7] Two overarching principles have been identified by the Group that are important to address:

- employers' participation *ab initio* in the JLC process;
- increasing the confidence of all the social partners in the operation of the JLC system.

Incentivising Employer Engagement

There are six stages to the making of an ERO: -

1. Negotiation at a JLC;
2. Making a proposal for an ERO. If agreement is not reached, the *Industrial Relations (Amendment) Act 2012* provides a mechanism by which the matter can be referred to

[7] See, for example, Labour Court Review of JLCs 2018 (https://www.labourcourt.ie/en/publications/employment-regulation-orders/review-of-joint-labour-committees-master-version-finalt-report-003-002-.pdf).

the Labour Court, which makes a recommendation. If the recommendation is not accepted, it can be adopted on the casting vote of the Chair of the JLC;

3. Where the committee adopts proposals, a draft ERO is referred to the Labour Court and can be adopted following a public enquiry;
4. The draft is submitted to the Minister;
5. The draft is laid before both houses of the Oireachtas;
6. Unless the draft is annulled by a resolution of the Oireachtas the ERO becomes law.

At present, most EROs fall at the first stage, as employer representatives do not attend JLCs to participate in formulating proposals, or where they do, agreement cannot be reached at the negotiation stage. The Court, in its 2018 Review, noted, on several occasions that 'the fact that the JLC has not met deprives the Court of an opportunity to assess the current relevance or value of the JLC on an evidential basis'.[8]

The Group has considered how this issue of non-participation of employer representatives may be addressed. In this context, the Group has been mindful of:

- the intention of the Oireachtas that a functioning JLC system should operate (see the *Industrial Relations Acts 1946-2012*);
- the requirements of the proposed EU Directive on Minimum Wages (Article 4) that Member States with a collective bargaining coverage below a threshold (80%) shall provide for *a framework of enabling conditions for collective bargaining*, either by law after consultation of the social partners or by agreement with them (emphasis added); Member States (with the involvement of the social partners, and in accordance with national laws and practice, are required 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 (emphasis added)*;
- The decision of the Supreme Court in the NECI case, which found the Sectoral Employment Order (SEO) system to be constitutionally sound.[9]

Where employers abstain from participating in a JLC, the statutory process established by the Oireachtas is rendered inoperative. One key incentive to participation is to establish a process for proceeding with a ERO in the event employers, in accordance with fair procedures, are given all reasonable opportunity to engage, but decline to do so.

[8] Labour Court Review of JLCs 2018 (https://www.labourcourt.ie/en/publications/employment-regulation-orders/review-of-joint-labour-committees-master-version-finalt-report-003-002-.pdf).
[9] *Naisiunta Leictreacht (NECI) V Labour Court & Ors* [2021] IESC 36.

The Group believes that this issue could be addressed by allowing the first stage in the process (above) to be bypassed in circumstances where employer representatives fail to make nominations to the JLC. In such circumstances, a process (somewhat analogous to that used in the making of SEOs) would kick-in, whereby the Labour Court would be charged with drafting an ERO for consideration by the Minister, where drafting such an order is in the best interests of the sector. Where such a situation arises, the Labour Court must ensure that the ERO is compliant with the pre-conditions set down in s42A of the 1946 Act (as inserted by the 2012 Act) to which a JLC would have been required to adhere in drafting an ERO. This is in addition, of course, to the preconditions to which the Labour Court must already adhere under s42B of the 1946 Act (as inserted by the 2012 Act).

A second scenario should also be considered. Where employers engage in a JLC, and the JLC fails to adopt or formulate proposals, and no further progress can be made, currently the matter can be referred to the Labour Court for a recommendation. The proposal set out here is that, where the JLC still fails to adopt the proposals following the Labour Court's recommendation, the Labour Court, where it deems it in the best interests of the sector, can finalise the process by drafting an ERO for consideration by the Minister. The Group recognises the legal requirement (based on the NECI and McGowan cases) that the Labour Court would not be entitled, under this proposed process, to simply 'rubber stamp' any partial agreements at the JLC. The case law is clear that the Labour Court must ensure every ERO (including those formulated by the Court) be compliant with the statutory requirements set out in the 1946 Act (as amended). However, in this scenario, where partial agreement may have been reached at the JLC, the Court could be requested to engage with, and give due notice to, any matters which were the subject of agreement at the JLC. The aim is to ensure, as much as possible, that views expressed during negotiations are reflected in the Labour Court's recommended ERO, while in no way detracting from the requirement of the Court to ensure its proposals are compliant with the relevant legislation.

In either scenario (bearing in mind the comments of the Supreme Court in NECI) it would be important to ensure that employer representatives in the sector would have adequate opportunities to participate in the process, and that all interested parties would have a right to be heard. This should involve, for example:

- An initial invitation to employer representatives to attend, and participate in, JLC negotiations;

- Where nominations are not made or an invitation is not accepted, having been requested or issued by the Labour Court, the Labour Court must give employers a further opportunity to nominate or attend, making it clear that failure to nominate or attend will result in the Labour Court formulating proposals;
- In the event of the failure of such a process, the Labour Court would formulate a draft ERO. Before finalising the ERO, and having published the draft ERO as currently required, the Labour Court will be required to invite submissions from all parties and schedule a hearing, for those parties who wish to be heard.[10]
- Any proposals submitted by the Court would need to comply with the requirements currently set down in section 42A of the *Industrial Relations Act 1946*, as inserted by *the Industrial Relations (Amendment) Act 2012*, that the JLC would normally ensure are met before submitting proposals to the Labour Court. In essence, the Labour Court would be subject to the preconditions to which the JLC would normally be required to adhere, and the Labour Court would be subject to all requirements imposed on JLCs to take account of any written submissions, representations, or documents received in relation to the subject matter of the proposals.

If the nominated employer representatives have been offered several opportunities to participate in the JLC process, but decline to do so, the Labour Court would formulate a draft ERO for submission to the Minster, who would lay the Order before the House in accordance with the legislative scheme.

It is envisaged that the mere existence of such a process would act as an incentive to employers to participate in the JLC process at the earlier stages (rather than abstain). In this regard, the Group emphasises that the principal objective here is to *promote and facilitate collective bargaining*, in accordance with the upcoming EU law obligations.

Improving the Functioning of JLCs

A key objective is to increase confidence (of all the sectoral social partners) in the operation of the JLC system. In this regard, the Group has considered a number of issues:

[10] Where an ERO is drafted by the Labour Court, it must be published in the normal manner and employers must be given sufficient opportunity to make submissions and be heard before the Labour Court before the ERO is finalised. Section 42B(12) of the Industrial Relations Act 1946 (as inserted by the 2012 Act) currently provides that the Labour Court, where it is considering the making of a recommendation following the failure of a JLC to agree proposals 'may, where it considers it appropriate to do so, hear all parties appearing to the Court to be interested and desiring to be heard'. The Group believes that this should be amended so that a hearing must be held where a party requests one.

1. Establish panels of technical assessors (which the Court can appoint under the 1946 Act) which can aid the JLCs in complying with their statutory requirements under the IR Acts (e.g. to consider competitiveness, wage rates in comparable sectors/ other jurisdictions, etc). Such a panel could also be used to assist the Court, in the event the Court seeks to formulate draft proposals for an ERO. This panel could be established by the Court, in consultation with the social partners, and its members would require sector specific knowledge.

2. The make-up and membership of JLCs. The Group recommends expanded and specific training be provided to JLC Chairs, and a review be carried out of the qualifications required for appointment; for example, Chairs could be appointed from the ranks of the WRC Adjudicators. Consideration might also be given to the allocation of more seats at the JLCs to have better representation of employers and employees across the sector, and to the rotation of nominees on the JLCs.

3. Establishment of JLCs. Under Section 37 of *Industrial Relations Act 1946* an establishment order may only be made where the Court is satisfied:

(a) in case the application is made by an organisation or a group of persons claiming to be representative of such workers or such employers, that the claim is well-founded, and
(b) that either—

(i) there is substantial agreement between such workers and their employers to the establishment of a joint labour committee, or

(ii) the existing machinery for effective regulation of remuneration and other conditions of employment of such workers is inadequate or is likely to cease or to cease to be adequate, or

(iii) having regard to the existing rates of remuneration or conditions of employment of such workers or any of them, it is expedient that a joint labour committee should be established.

The Group believes it is important to clarify and refine the scope of the sectors in which JLCs might be established in the future, to ensure that they are established within sectors of the type traditionally envisaged by the 1946 Act, and the Group recommends an examination of whether section 37 currently meets that purpose.

4. Other Policy/ legal changes.

In the context of overall reform of the JLC system, the Group recommends the consideration of other policy/ legal changes which could be made to incentivise participation in JLC mechanisms, by providing certain benefits to those operating in regulated sectors. These could include commitments to engage on certain matters; for example, on labour supply issues in certain sectors; on the current mechanisms by which employers can seek temporary exemptions from the terms of EROs under section 48A of the IR Act 1946 (as inserted by the 2012 Act); and on the grounds on which an ERO can be revoked or amended under section 42A of the IR Act 1946 (as inserted by the 2012 Act), and any resulting impact on the employee's contract of employment.

5. The Industrial Relations Acts 2001-2004 (as amended by Part 3 of the Industrial Relations Act 2015).

Principle Two – Referral of Disputes to the Labour Court under Part 3 of the *Industrial Relations (Amendment) Act 2015* (set out in the Progress Update for the LEEF High Level Working Group on Collective Bargaining; Oct 27 2021).

The Group intends to address some of the challenges encountered by parties referring disputes to, or defending disputes at, the Labour Court under Part 3 of the 2015 Act. In particular, the Group will examine the provision of expert means to assist the Labour Court in independently assessing and verifying economic and comparator data for the parties.

The process for referring disputes to the Labour Court under Part 3 of the *Industrial Relations (Amendment) Act 2015* has been only rarely utilised since the entry into force of the Act. The Group has identified difficulties for trade unions referring claims, and employers in defending claims, under the legislation. These relate, significantly, to difficulties in establishing the comparisons required under the legislation. Section 5 (3) of the 2001-2004 Acts (as amended by Part 3 of the 2015 Act) states that:

> The Court shall not make a recommendation providing for an improvement in the remuneration and conditions of employment of a grade, group or category of worker unless it is satisfied that the totality of the remuneration and conditions of employment of the workers concerned provides a lesser benefit to the workers concerned having regard to the totality of remuneration and conditions of employment of comparable workers employed in similar employments.

There are three points of comparison to be made:

A. That the workers are 'comparable workers' (the job);
B. That the workers work in 'similar employments' (the organisation);
C. The workers concerned must benchmark themselves against the totality of remuneration and conditions of employment in the comparator organisations.

There are corresponding difficulties for those taking and defending claims, and for the Labour Court in assessing claims before it:

A. Precise data on the types of jobs done may be difficult to establish where the named comparator(s) are not party to the dispute and have no reason, incentive, or obligation to supply any information;
B. It may be difficult to obtain organisational information on named comparator(s) not party to the dispute, where such comparator(s) have no reason, incentive, or obligation to supply any information;
C. Terms and conditions of employment clearly constitute commercially sensitive information. Named comparator(s) not party to the dispute have no reason, incentive, or obligation to supply any information (and, in fact, are likely to have an interest in not doing so for commercial and industrial relations reasons).

Technical Assessors

The Group recognises that these obstacles are significant for trade unions taking claims under the Act, and employers seeking to defend such claims. Under section 14 of the *Industrial Relations Act 1946*, the Labour Court may appoint technical assessors to assist it on any matter relating to proceedings before the Court. The Group believes that increased use of this power may be significant in assisting the Court in proceedings under the 2001-2004 Acts (as amended).

While it remains for the parties themselves to make their respective cases to the Labour Court, technical assessors, with sectoral expertise in the sector in which the dispute arises, could be an aid to the Court in preparing opinions, if directed to do so by Court itself, in relation to the points of comparison outlined above. Technical assessors could utilise all available data sources (these could include, for example, CSO data, Revenue real-time sources, etc).

It seems clear that technical assessors should not be required In every claim under the legislation, and it would be for the Court alone to decide if technical assessors are required, on a case-by-case basis.

In proceedings under the legislation, an opinion furnished by technical assessors could certainly aid the Court, at recommendation stage, in coming to a view on the balance of probabilities.

Other potential benefits of using technical assessors include:

- Where a claimant nominates multiple comparators, technical assessors could be charged with assessing the validity of those comparators and furnishing an opinion to the Court.
- In certain circumstances, representative groups could obtain data to aid in comparisons, which could only, however, be used in an anonymised way (for reasons of commercial sensitivity). Technical assessors could be empowered to validate such data on the Court's behalf.

6. Good Faith Engagement at Enterprise Level

Principle Three – Good Faith Engagement at the Enterprise Level (set out in the Progress Update for the LEEF High Level Working Group on Collective Bargaining; Oct 27 2021).

The current wording of the Draft EU Directive on the Minimum Wage includes a requirement for Member States, where collective bargaining coverage is less than 80%, to provide for a framework of enabling conditions for collective bargaining and the establishment of an action plan to promote collective bargaining.*

This sits alongside growing European and International legal and policy momentum towards re-examining how employers and trade unions engage on matters of mutual interest.

The Group is also cognisant of a global trend towards incorporating strong environmental, social and corporate governance into business models.

Taking account of these developments, whilst at all times remaining conscious of the voluntarist framework of industrial relations in Ireland,

The Group will explore a means to promote good faith engagement between employers and workers at the level of the enterprise, where a substantial proportion of employees are represented by a trade union and without prejudice to any outcome of such engagement.

*(*changed to 80% in the agreed draft of June 7 2022).*

The Current Position

In its interim report to the Tánaiste in October 2021, the Group committed to explore a means to promote good faith engagement between employers and workers at the level of the enterprise. The Group has considered the position of employees, who are members of a trade union and wish to be represented by their union in negotiating terms and conditions of employment, in situations where the employer does not engage in collective bargaining with the trade union at enterprise level. At present, the options open to trade unions and their members in this position are:

1. Seek a Labour Court recommendation under section 20 of the *Industrial Relations Act 1969*: any such recommendation is binding on the trade union referring the claim, but not on the employer. In essence, any recommendation is not enforceable against the employer.

2. Invoke the process under the *Industrial Relations Acts 2001-2004* (as amended in 2015): This process can result in a binding Labour Court determination, which can directly set legally binding terms and conditions of employment.

Therefore, under the 1969 Act, any recommendation by the Labour Court (including a recommendation that the employer should recognise the trade union for collective bargaining purposes) is wholly unenforceable by the referring trade union. Under the 2001-2004 Acts (as amended), by contrast, an employer can have terms and conditions of employment imposed upon it by order of the Labour Court, and enforced by the Circuit Court.

The Group has considered a means to promote engagement between employers and trade unions, which cannot be disregarded by either party, but, equally, does not result in the imposition by a third-party of any outcome, once a considered and reasoned response has been furnished in line with the process outlined below. At all times the Group is cognisant both of the voluntarist tradition of Irish industrial relations, and of the requirements of the Draft EU Directive on Adequate Minimum Wages. The draft Directive, on which provisional agreement has been reached (June 7th 2022) between the Council and the European Parliament, foresees that where the collective bargaining coverage rate is below the threshold of 80%, Member States should establish an action plan to promote collective bargaining. The action plan should set out a clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage.

Good Faith Engagement

The Group takes as a starting point, in exploring means to facilitate and promote good faith engagement, two guiding principles:

- It is neither possible nor desirable to seek any mechanism by which parties can be obliged to reach an agreement.
- Trade union members should not have their membership rendered nugatory (in line with the jurisprudence of the European Court of Human Rights).

The view of the Group is that there is nothing inconsistent about encouraging parties to engage with one another, in good faith – and imposing an obligation upon them to try to do so – but at the same time not compelling parties to reach any outcomes or agreement.

A Proposed Process for Good Faith Engagement

1. The process is triggered by a written request from a trade union to an employer, to engage with the trade union in relation to the rates of pay and/or terms and conditions of employment of the grade, group or category of workers to which the request relates.

2. The trade union must establish a threshold of membership amongst the specific grade, group or category of workers employed by the employer. The Group notes that, under the *Employees (Information and Consultation) Act 2006*, which obligates employers with more than fifty employees to establish arrangements for consultation with, and the provision of information to, employees, the threshold is set at 10% (subject to a minimum of 15, and a maximum of 100, employees). The Group does not wish to exclude employments with fewer than 50 employees from the scope of this process. Therefore, the Group believes it appropriate, whilst noting the 2006 Act threshold, to avoid setting a strict percentage or numerical threshold; the level of membership required, for example, could be one that is 'meaningful' (leaving it to Labour Court to develop, through any recommendations it might issue, guidance on this term).

   The levels of membership amongst the grade, group or category of workers employed by the employer may be determined in the same manner as the process set out in section 2A of the *Industrial (Amendment) Acts 2001-2004* (as amended) requiring a statutory declaration to be made by the chief officer of the trade union which made the request, which can be confirmed by the Labour Court to its satisfaction.

3. Where the employer does not accede to the request for a good faith engagement, the matter can be referred to the Labour Court for investigation.

   The Court shall decline to conduct an investigation into a request for good faith engagement where it is satisfied that the employer is already engaged in collective bargaining with a recognised trade union or a properly constituted excepted body.

4. The employer and the trade union engage in good faith (see also the Appendix to this section):

a. A good faith engagement meeting will be held within a defined time period (normally 30 days from the receipt by the employer of the trade union's request), ensuring that the timeframe allowed for the meeting itself is appropriate;
b. A clear agenda outlining the key representations to be made must be furnished by the trade union in advance of the meeting, if these are to be considered in the written response;
c. The good faith engagement meeting should be attended by the relevant level, and number, of management and trade union representatives, depending on the key representations outlined in the agenda furnished;
d. The employer will give genuine consideration to the key representations set out by the trade union in the agenda furnished, and discussed at the meeting itself;
e. The employer will furnish the trade union with a clear, considered, and reasoned response, in writing, to the key representations made, within a period that is reasonable having regard to all the circumstances;
f. Each party will be afforded an opportunity to obtain reasonable clarifications solely regarding the key agenda items discussed and/ or the written response furnished.

5. The trade union will not have recourse to industrial action once the good faith engagement process has been triggered.

6. A trade union may complain to the Labour Court that an employer has failed to engage with it in good faith in accordance with point 4. The Labour Court shall give the parties an opportunity to be heard and decide whether the complaint is, or is not, well-founded. If the Labour Court finds that the complaint is well-founded, it may make a recommendation setting out what the employer should do in order to comply with the good faith engagement obligation under this process (including the timeframe within which any measures should be taken). Whether a recommendation is made to have a good faith engagement is a matter entirely at the discretion of the Labour Court, taking into account all the circumstances of the case.

7. A trade union may complain to the Labour Court, within six weeks of the Labour Court issuing its recommendation, that there has been a failure to comply with the recommendation. The Labour Court shall give the parties an opportunity to be heard and decide whether the complaint is, or is not, well-founded. If the Labour Court finds that the complaint is well-founded, it may make a determination setting out what the employer

should do in order to comply with the good faith engagement obligation under this process (including the timeframe within which any measures should be taken). Whether a determination is made to have a good faith engagement is a matter entirely at the discretion of the Labour Court, taking into account all the circumstances of the case.

8. Where there is a failure to comply with the terms of a determination, within the period specified, a trade union may make an application to the Circuit Court. The Circuit Court shall, without hearing the employer or any further evidence, make an order directing the employer to carry out the determination in accordance with its terms.

9. Failure to comply with such an order of the Circuit Court is an offence, and a person guilty of such an offence will be subject to a pecuniary penalty.

10. The trade union may not make any further application to the Labour Court for a good faith engagement for a period of three years.

Appendix: Elements of Good Faith Engagement

Suggested elements of good faith engagement (this a non-exhaustive and indicative list):

- attending, and participating in, any meeting within a reasonable timeframe;
- giving genuine consideration to representations made by the other party;
- providing any relevant information (other than confidential or commercially sensitive information) in a timely manner;
- giving a clear, considered, and reasoned written response to representations made by the other party following a good faith meeting within an agreed timeframe;
- the parties should be responsive, and must not do anything likely to mislead or deceive each other;
- the size, composition and representative nature of the trade union and employer representatives should be reasonable and balanced between the parties;
- refraining from capricious or unfair conduct (this could include, for example, refusing to meet, or discuss, with properly nominated representatives of the other party; penalisation of an employee due to trade union activity; interfering with the process of the parties' nomination of their independent representatives; unduly hurrying the engagement to prevent proper consideration; taking extreme positions with the intention of shutting down the engagement).

- Each party should be responsible for making its own record of discussions held.

Good Faith Engagement does not require that parties reach agreement on any of the subject(s) under consideration.

6. Collective Bargaining at Enterprise Level

Under the Irish voluntarist industrial relations model, trade unions and employers are free to bargain and conclude collective agreements at enterprise level on such terms as they choose (subject to legislative requirements on certain terms and conditions of employment, such as minimum wage rates, non-discrimination, etc). Most, if not all, enterprise collective agreements tend to include dispute resolution provisions. The State's third-party dispute resolution bodies (the Workplace Relations Commission- WRC- and the Labour Court) are available to aid parties, should one or other, or both, parties request assistance. The Conciliation service of the WRC provides the initial assistance to parties who request this; where a dispute cannot be resolved, the Conciliation Officer may declare that no further progress can be made. In such circumstances, the parties can make a joint request for the assistance of the Labour Court.

Under section 20 of the *Industrial Relations Act 1969*, the parties can make a joint request to the Labour Court to investigate a dispute and undertake, before the investigation, to accept any recommendation issued by the Court.

Furthermore, under section 20 of the 1969 Act, workers concerned in a trade dispute, or their trade union(s), can request the Court to investigate and make a recommendation. Any such recommendation is binding on the workers/ trade unions, but not the employer.

The Group has considered how the current system might be improved in order to function more smoothly for parties involved in collective bargaining processes.

Training

The Group believes that constructive and efficient collective bargaining processes require support for those, on all sides, engaging in such processes. In particular, the Group recommends allocation of funding, under the *National Training Fund Act 2000*, which can be accessed by trade unions and employers. Providing 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.

A Proposed Code of Best Practice on Enterprise Collective Bargaining.

The Group recommends the development of a Code of Best Practice on Enterprise Collective Bargaining (pursuant to section 20 of the *Workplace Relations Act 2015*). Elements of such a code might include the following.

1. The overarching principle that disputes should be resolved as close to the workplace as possible (i.e., at local level);
2. Discussions on matters in dispute at local level should be concluded within a period that is reasonable having regard to all the circumstances. Parties at local level should commit to, at all points, moving negotiations forward in a timely and efficient manner;
3. Parties will commit to making the bargaining process as timely and efficient as possible. In particular, parties will commit to avoiding any unreasonable delays in, or placing unreasonable obstacles to, progressing negotiations, including availability of officials on all sides;
4. Relevant information (other than confidential or commercially sensitive information) should be provided by both parties in a timely and efficient manner;
5. The representatives for both parties should be at the appropriate level to engage in negotiations effectively, depending on the subject(s) under consideration, and, at all times, should have access to relevant decision-makers;
6. Where a local process has reached a point where the parties feel no further progress can be made, parties will endeavour to identify any key points of agreement and any key points of remaining dispute;
7. Where the parties seek the assistance of the WRC, the parties should be able to present the Commission with a reasonable level of clarity as to the nature of the subject(s) in dispute. In such circumstances, any progress made at local level should not be abandoned such that subject(s) on which there is some level of consensus are 're-opened' before the WRC;
8. Parties embarking on a conciliation process at the WRC should commit to, at all points, moving the process forward in a timely and efficient manner. Parties will endeavour to commit to agreed timelines at the outset of the WRC process;
9. Parties will commit to avoiding any unreasonable delays in, or placing unreasonable obstacles to, progressing negotiations at the WRC;
10. The representatives for both parties should be at the appropriate level to engage in the conciliation process effectively, depending on the subject(s) under consideration and, at all times, should have access to relevant decision-makers;

11. Where a conciliation process at the WRC has reached a point where the Conciliation Officer and/ or the parties feel that no further progress can be made, the parties will endeavour to identify any key points of agreement and any key points of remaining dispute. Where the parties seek the assistance of the Labour Court, the parties should be able to present the Court with a reasonable level of clarity on the remaining areas in dispute;
12. The Labour Court, in deciding to investigate or make any recommendation in relation to a dispute referred to in point 11 (including disputes referred to the Court under the 1969 Act) shall be satisfied that both parties have observed the obligation to move negotiations forward in a timely and efficient manner throughout the process;
13. Normal industrial relations protocols will continue to apply, such that no industrial action will be undertaken while processes in the WRC or Labour Court are ongoing.

7. Conclusions

The Group considers this report to contain a package of recommendations, which, if implemented in full, will improve the functioning of collective bargaining, and will improve the industrial relations landscape in Ireland. The recommendations will also ensure Ireland is well placed to fulfil upcoming EU law obligations, in a meaningful way, and in the context of a genuine tripartite approach, which respects the autonomy of the social partners.

The Group recommends that the implementation of the recommendations contained in this report by subject to formal, and ongoing, review. The Labour Employer Economic Forum (LEEF) will continue to provide a structure for tripartite dialogue, between Government, Employers, Trade Unions, on economic and employment issues as they affect labour relations. In this context, the Group recommends that the LEEF should oversee implementation of the recommendations contained in this report, including formal review of their impact. It should also provide a forum for tripartite consideration of related workplace issues, including, aspects of the proposed EU Directive not addressed by the Group in this report.

Appendix One

Mr Leo Varadkar, T.D.

Tánaiste and Minister for

Enterprise, Trade and Employment

23 Kildare St

Dublin 2

D02 TD30

29 July 2021

Interim Report of the LEEF High Level Working Group on Collective Bargaining

Dear Tánaiste,

On 30 March this year, the Government announced the establishment of a High-Level Working Group under the auspices of the Labour Employer Economic Forum (LEEF) to review collective bargaining and the industrial relations landscape in Ireland.

On my appointment as Chair to this Group, I was tasked with facilitating the examination of the adequacy of the workplace relations framework in supporting the conduct and determination of pay and conditions of employment having regard to the legal, economic, and social conditions in which this framework operates. The Group was also asked to examine the issue of trade union recognition including any implications it may have for our collective bargaining processes.

In its consideration of the legal and constitutional impediments that may exist in the reform of the current systems, the Group was asked to be cognisant of individual employment rights frameworks and the EU context, including models of employee relations and pay determination established in other Member States.

Finally, the Group was asked to review the current statutory wage setting mechanisms and, where appropriate, make recommendations for reform considering the Supreme Court's ruling in the NECI case. The NECI judgment was issued on 18th June and the Supreme Court has now upheld the Constitutionality of the legislative framework underpinning the Sectoral Employment Orders and confirmed its acceptance that the key objective of the legislation - maintaining industrial harmony - is a legitimate objective of a modern democratic state's ambition for supporting competitiveness by promoting and recognising high standards and qualifications.

The issue of trade union recognition is noted in the Supreme Court judgement in the NECI case, with a European context for this specifically remarked upon at para. 139 through reference to Demir v. Turkey. In this case, the European Court of Human Rights observed that the right to bargain collectively with an employer had, in principle, become one of the essential elements of the right to form and join trade unions, for the protection of interests set forth in Article 11 of the European Convention on Human Rights. In the judgement, MacMenamin J. observes that collective bargaining is now seen as a recognised feature of the social market within the European Union. The Group will consider the comments of the Supreme Court in this regard as part of its wider deliberations on collective bargaining.

The Group, in its terms of reference, committed to consulting with all relevant stakeholders at appropriate times and it should be noted that our work has already generated a considerable element of external interest and scrutiny. Whilst the mechanism to take the views of interested parties on board is yet to be agreed, it is clear that some element of consultation will be required.

Interim Report on Work to Date

The Group has met four times to date and an update on its work was provided for the information of the LEEF Plenary on 5th July.

The Group held its first meeting on 16 April 2021. At its second meeting on 21 May, the Group considered a position paper setting out the current legislative framework for industrial relations in Ireland with a view to establishing any gaps and developing a consensus around an approach to address these.

Following a positive and productive high-level discussion it was agreed that a number of the issues raised could best be explored through a series of bilateral discussions between members of the Group, the Chair and a DETE official from the Secretariat.

These bilateral discussions have facilitated broader consideration of some options for the work programme. The outputs have been discussed at the third meeting of the Group on 5th July and agreement has been reached that a draft interim report would be finalised by the Group at its fourth meeting during the last week in July. A further series of bilateral engagements will be held in August and early September to progress each element of the work programme.

Future Work Programme

There is general agreement amongst the Group that in order to increase our national collective bargaining coverage, looking towards the 70% ambition set out in the European Commission's Draft Directive on the Minimum Wage, the effectiveness of our existing sectoral bargaining and wage setting mechanisms must be examined and any reforms required identified and progressed.

This work is informed by the Supreme Court judgement in the NECI case which provided important clarification and guidance to the Group and has influenced its decisions on the work programme.

In order to increase Ireland's collective bargaining coverage through either of our sectoral bargaining systems - SEOs or EROs (arising from the JLC process) – and at enterprise level, the Group will focus on the following elements which will form the basis of its final report.

1. National Economic and Social Council (NESC) Research

Recognising legislative moves at the level of the EU, and internationally (notably in the USA) and non-legislative developments (for example, in the area of Environmental, Social, and Governance – ESG - stakeholder engagement), the group has asked NESC to prepare a short independent research paper which will set out the context for the work of the Group. This will focus on recent European and international moves to look more closely at how employers and trade unions engage on matters of mutual interest and the possible implications of this for Ireland.

2. Enhancing Sectoral and Enterprise Level Bargaining Mechanisms

Methods to increase sectoral bargaining coverage and encourage meaningful participation by both workers and employers in the existing SEO/ERO processes will be examined through a further series of bilateral engagements in the coming weeks. The issue of trade union recognition will also be explored during the course of these bilaterals.

3. Reform of Industrial Relations (Amendment Act) 2015

The Group is considering whether there may be a potential deficiency in the IR (Amendment) Act 2015 which relates to the requirement to provide comparator data for remuneration and terms and conditions when referring a dispute to the Labour Court. The Group has agreed to consider Part 3 of the IR Act at its September meeting.

Assessment of Progress

Whilst there is clear commitment and a strong level of goodwill on all sides to advance the work of the Group, it should be acknowledged that participation in these deliberations is not without its challenges for both trade union and employer representatives. It is important to recognise the leadership required to establish the Group and the positive and constructive engagements held to date by all members.

I believe that both the trade union and employer representatives on the Group generally accept that the current system of collective bargaining is not functioning optimally for a variety of reasons and recognise the need for a shift from the *status quo*. That being said, in order to advance our common agenda, movement will be required from all sides. As is reflected in the Terms of Reference, due consideration will also need to be given to the economic as well as the social implications of the recommendations of the Group particularly in light of various evolving external factors.

I do not underestimate the difficulty of this work, but I am strongly of the view that amongst the members there is an awareness of the need for significant change and a serious intent to reach a mutually agreed and workable system, which will increase collective bargaining coverage and provide meaningful benefits not only to workers and employers but Irish society as a whole.

Timeline for Conclusion

The Group has committed to submitting a further progress report to you by the end of October with a view to agreeing a final report as soon as possible thereafter.

I am available to arrange a meeting with you should you consider it useful to discuss any elements of this report or the work of the Group in more detail.

Yours sincerely,

_____

Prof Michael Doherty

Head of Department of Law

Maynooth University

Appendix Two

Mr Leo Varadkar, T.D.

Tánaiste and Minister for

Enterprise, Trade and Employment

23 Kildare St

Dublin 2

D02 TD30

27 October 2021

Progress Update for the LEEF High Level Working Group on Collective Bargaining

Dear Tánaiste,

In my letter to you of 29 July I set out the Interim Report of the LEEF High-Level Group on Collective Bargaining and committed to providing you with a further progress update by the end of this month.

The Group has met twice since the submission of the Interim Report to you at the end of July and I have also held a series of bilateral engagements with the members.

This work has led to the development of three principles which could result in meaningful reform of collective bargaining and industrial relations in the State. These are:

Principle One – Joint Labour Committees

The Group recognises that the legislative intention as set out in the Industrial Relations Act 1946 and updated in the Industrial Relations (Amendment) Act of 2012, is for the Joint Labour Committee (JLC) system to operate effectively as a mechanism to promote the sectoral regulation of pay and conditions through agreement.

The Group acknowledges that the JLC system is not now functioning optimally in this capacity. In light of this, the Group will explore options to incentivise employer engagement with a modern, evidence-based and consensus- focussed JLC system, responsive to the economic environment, which can ensure this important sectoral bargaining mechanism operates effectively.

Principle Two – Referral of Disputes to the Labour Court under Part 3 of the Industrial Relations (Amendment) Act 2015.

The Group intends to address some of the challenges encountered by parties referring disputes to, or defending disputes at, the Labour Court under Part 3 of the 2015 Act. In particular, the Group will examine the provision of expert means to assist the Labour Court in independently assessing and verifying economic and comparator data for the parties.

Principle Three – Good Faith Engagement at the Enterprise Level

The current wording of the Draft EU Directive on the Minimum Wage includes a requirement for Member States, where collective bargaining coverage is less than 70%, to provide for a framework of enabling conditions for collective bargaining and the establishment of an action plan to promote collective bargaining.

This sits alongside growing European and International legal and policy momentum towards re-examining how employers and trade unions engage on matters of mutual interest.

The Group is also cognizant of a global trend towards incorporating strong environmental, social and corporate governance into business models.

Taking account of these developments, whilst at all times remaining conscious of the voluntarist framework of industrial relations in Ireland,

The Group will explore a means to promote good faith engagement between employers and workers at the level of the enterprise, where a substantial proportion of employees are represented by a trade union and without prejudice to any outcome of such engagement.

The careful drafting of these principles reflects the challenging and complex nature of Ireland's voluntarist industrial relations tradition. Delivering outputs which would restore the JLC system to its intended operation, assist parties in bringing disputes to the Labour Court and ensure good faith engagement between workers and employers, would be very significant progress.

It should be acknowledged that reaching agreement on these outputs is difficult for both trade union and employer representatives. That being said, it is the stated intention of the Group to develop these principles into concrete actions which will form the basis of a final report to you as soon as practicable. To assist in this process, the Group will have recourse to research prepared for it by the Secretariat to the National Economic and Social Council (NESC) along with access to an expert in Constitutional and Employment Law.

The Group is also aware that its Terms of Reference commit to consulting with all relevant stakeholders at appropriate times and I believe that this should now proceed on the basis of the three principles set out above. This focused stakeholder consultation, organised and facilitated by the Chair, will be conducted within a four-week period and the outcomes will feed into the Group's deliberations before agreeing a Final Report which will be submitted to you for consideration by Government. If this is not possible before the end of this year, it will be as early as possible in 2022.

I am available to arrange a meeting with you should you consider it useful to discuss any elements of this progress update or the work of the Group in more detail.

Yours sincerely,

_____

Prof Michael Doherty

Head of Department of Law

Maynooth University

Appendix Three

21 December 2021

Mr Leo Varadkar, T.D.

Tánaiste and Minister for

Enterprise, Trade and Employment

23 Kildare St

Dublin 2

D02 TD30

End of Year Update for the LEEF High Level Working Group on Collective Bargaining

Dear Tánaiste,

In my letter to you of 28 October I set out a Progress Update on the work of the LEEF High-Level Group on Collective Bargaining following on from the Group's Interim Report in July.

The Group has met eight times in total since it was established in March of this year and I have also held a series of extensive bilateral engagements with the members. The Group has also had recourse to research prepared for it by the Secretariat to the National Economic and Social Council (NESC) along with presentations from two experts in Constitutional and Employment Law – Tony Kerr, S.C. and Professor Gerald Whyte of Trinity College. Two updates have been provided to the LEEF Plenary on the work of the Group.

As I informed you in October, we have developed three principles which could result in meaningful reform of collective bargaining and industrial relations in the State.

These aim to restore the Joint Labour Committee (JLC) process to its intended operation, as set out in the Industrial Relations Acts; to allow the Labour Court to appoint technical assessors to assist workers or employers in referring disputes to it under the Industrial Relations (Amendment) Acts 2001-2015 and to explore ways in which good faith engagement between workers and employers at enterprise level could be facilitated.

The discussions to date have led to broad consensus on the appointment of technical assessors with the fine detail around this process to be finalised in January. The issues around the JLCs and enterprise engagement will require considerably more work and dialogue early next year.

Whilst the work of the Group to date has not been without its challenges, I am of the view that there is considerable willingness on the part of both the union and employer representatives to agree to concrete actions for each of the three principles, which would effect real change to our industrial relations and collective bargaining landscape.

As I set out in my last update, I intend to conduct a focused stakeholder consultation in the coming weeks, the outcomes of which will feed into the Group's deliberations, before agreeing a Final Report which will be submitted to you for consideration by Government as early as possible in 2022.

Finally, I'd like to take this opportunity to express my thanks to all the Group's members for their constructive engagement with the process and for the time and effort they've invested in our work to date.

I'd also like to record my appreciation for the work of Clare Dunne, Assistant Secretary, Workplace Relations and Economic Migration Division who is retiring at the end of this year. Clare has provided great support, encouragement and guidance throughout the process and her energy and commitment to reform in this area will certainly be missed by the entire Group.

It may be useful to discuss the work of the Group in more detail and I can arrange to meet with you in the New Year on this basis.

Yours sincerely,

_____

Prof Michael Doherty

Head of Department of Law