

# An Opportunity to Review and Reframe Collective Bargaining and the Industrial Relations Regime

SECRETARIAT PAPER

No.31 October 2022



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An Chomhairle Náisiúnta Eacnamaíoch agus Shóisialta  
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National Economic & Social Development Office NESDO





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# An Opportunity to Review and Reframe Collective Bargaining and the Industrial Relations Regime

Dr Damian Thomas

Produced for the Labour and Employer Economic Forum's (LEEF) High Level Working Group Review of Collective Bargaining and the Industrial Relations Landscape

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# Context and Acknowledgements

This paper was prepared by the NESC Secretariat as an input into the High-Level Working Group's Review of Collective Bargaining and the Industrial Relations Landscape. This High Level Working Group operated under the auspices of the Labour and Employer Economic Forum (LEEF). I would like to thank Professor Michael Doherty (School of Law and Criminology, Maynooth University) and Professor Tony Dobbins (Professor of Work and Employment Relations, Department of Management, Birmingham Business School, University of Birmingham) for their very helpful comments and feedback on the first version of this paper. The opinions and views expressed within the paper belong solely to the author. The original version of the paper has been updated to reflect recent policy developments particularly with regards to the EU Commission's Adequate Minimum Wage Directive.





# 1. Introduction

This paper was developed to provide an input into the deliberations of the High Level Working Group that was established under the auspices of the Labour and Employer Economic Forum (LEEF) to review collective bargaining and the industrial relations regime. Rather than seeking to provide any particular solutions to the ‘thorny’ policy issues that this Group is grappling with, this position paper focuses on setting the context for these important tripartite deliberations. In particular, it emphasises that notwithstanding the complexity of the issues being addressed, there is now a real opportunity to not only revise but reframe our approach to collective bargaining and industrial relations.

The position paper is structured in the following way. Section 2 describes the establishment of the High Level Group and why this is both an important and timely policy exercise. The subsequent three sections (3, 4, and 5) address in turn the main employment relations issues being considered by the High Level Group namely the right to bargain and statutory trade union recognition; the statutory wage setting mechanisms and the proposed EU Adequate Minimum Wage Directive. While recognising that each of these policy areas have their own history, complexities and challenges it is suggested that there are elements and aspects of each area that can unlock constraints, open up new possibilities and foster consensus in the others, which is why it is key to explore them in an integrated manner as part of a strategic review. Linked to this is the contention that there now exists a set of ‘enviroming conditions’ that collectively are constraining and incentivising the actors –the Government , Ibec and the ICTU – towards a more open and constructive engagement on these issues. This evolving context is also serving to build momentum around the benefits of forging a shared understanding on these said issues. The remaining sections of this paper deals with these aforementioned ‘enviroming conditions’. Section 6 considers the extent to which the debate around the future development of Irish industrial relations is being shaped by an emerging international political paradigm in which labour market fairness, employee rights and access to collective bargaining have moved very much centre stage. The influence of the tradition of social partnership and social dialogue and in particular the willingness of the parties to engage in pragmatic problem-solving deliberation is explored in section 7. The potential of the Adequate Minimum Wage Directive to provide a solution to the legal view that there is a constitutional obstacle to the introduction of effective national legislation to guarantee the right to engage in collective bargaining and/or mandatory trade union recognition is considered in section 8 while section 9 discusses the impact of Covid-19 on how society values and rewards essential workers. The extent to which legislative developments in Ireland have created industrial relations regime characterised as ‘regulated voluntarism’ is considered in section 10. The response of business representative bodies to what has been described as ‘new collectivism’ is outlined in section 11 while the following section (section 12) looks at some innovative company based solutions to the vexed question of the right to bargain and/or trade union recognition. Section 13 then discusses how public procurement could be used to support both collective bargaining and the maintenance of good employment standards. Section 14 is the conclusion.



## 2. The High Level Working Group: A Timely Review of Collective Bargaining and the Industrial Relations Landscape

In March 2021 the Tánaiste and Minister for Enterprise, Trade and Employment, Leo Varadkar TD 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. While indicating that the voluntarist approach had served the state well, the Minister indicated that a combination of factors ensured that it was now appropriate to undertake this review.

*The approach to industrial relations in Ireland is one of voluntarism whereby 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. This approach has served us well for many years. However, whilst there is an extensive range of statutory provisions designed to back up the voluntary bargaining process some of these are currently subject to legal challenge. In light of this and international moves to look more closely at how employers and trade unions engage on matters of mutual interest, I now consider it timely to review collective bargaining and the industrial relations landscape in Ireland. (Minister Leo Varadkar, T.D., 30/03/2021).<sup>1</sup>*

This High Level Group is chaired by Professor Michael Doherty (School of Law and Criminology, Maynooth) and is comprised of senior representatives nominated by ICTU and Ibec, Professor Bill Roche (School of Business, UCD) and senior officials from the Department of the Taoiseach and the Department of Enterprise, Trade and Employment. This Group was asked to:

- Examine the issue of trade union recognition and the implication of same on collective bargaining processes.

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- Examine the adequacy of the workplace relations framework supporting the conduct and determination of pay and conditions of employment having regards to the legal, economic and social conditions in which it operates.

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- 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 individual rights frameworks and the EU context. It may wish to consider other models of employee relations and pay determination established in other Member States. And,

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- Review the current statutory wage setting mechanisms and, where appropriate make recommendations for reform.

Ibec's participation in this tripartite review represents something of strategic policy shift as since the passage of the Industrial relations Act, 2015 they had been reluctant to engage on issues such as collective bargaining and trade union recognition (Sheehan, 2021b). Noting that while it is right to review the effectiveness of our structures, Danny McCoy (CEO, Ibec) has stressed that this review must be consistent with Irish business competitiveness, fairness and dynamism in our labour market.<sup>2</sup> It is also evident that Ibec's preference, in entering this structured review is to the maintain the overall voluntarist character of the industrial relations regime.

<sup>1</sup> <https://enterprise.gov.ie/en/News-And-Events/Department-News/2021/March/30032021a.html>

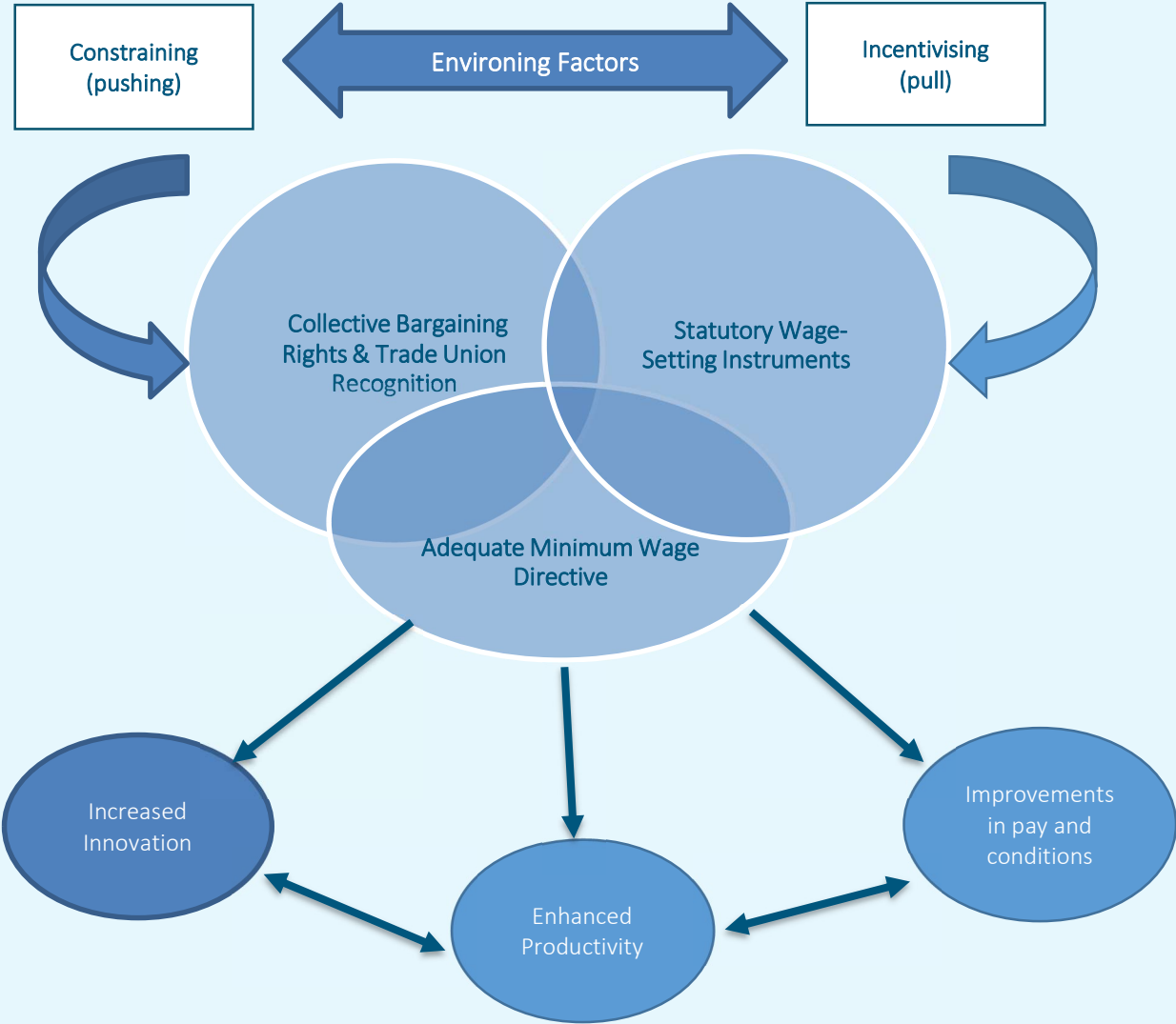
<sup>2</sup> <https://www.ibec.ie/connect-and-learn/media/2021/03/30/competitiveness-must-be-key-in-review-of-collective-bargaining>

The ICTU have been critical of the unwillingness of successive governments to introduce strong statutory protection for collective bargaining and union recognition. Although the Industrial Relations Act 2015 was described as a ‘right to bargain’ law it has, in practice had little tangible impact on collective bargaining processes and coverage (Dobbins *et al.*, 2020). They have also been critical of the employer’s ability under existing statutory provisions to exert a ‘veto’ on participating in Joint Labour Committees (Sheehan, 2019c). The ICTU therefore see the High Level Group as an opportunity to address what they consider as weaknesses in the current statutory framework particularly in the context of EU level developments on a number of these issues.

This initiative represents the first detailed examination by the social partners of these often fraught areas of industrial relations since the 1990s, and it has been described as a significant development that will be watched with considerable interest by both sides of industry, and by the various state agencies and government departments (Sheehan, 2021b). The social partners have clearly signaled their commitment to this peak social dialogue initiative and the fact that both Patricia King (General Secretary ICTU) and Danny McCoy (CEO, Ibec) are members of this High-Level Group signifies the importance they are attributing to it. The terms of reference of the group are quite ambitious and there is no guarantee that this deliberative process will forge a new consensus on a range of issues that have hitherto proven to be rather contentious. There is, however, a growing recognition of the need to put in place a regime that is ‘fit for purpose’ and is capable of meeting the needs of a 21st century economy, labour market and society. This will necessitate transitioning from an overt emphasis on orderly dispute resolution procedures, improving procedural efficiencies and ironing out ‘glitches’ per se – towards a more concerted focus on the type of reforms and changes that are necessary to ensure that the industrial relations or employment relations regime is actively contributing to increased innovation and productivity, enhanced competitiveness and a fairer, dynamic and more inclusive labour market.

This will not be an easy task and each of the meso policy issues considered in this paper – collective bargaining and trade union recognition; the statutory wage-setting mechanisms and the EU’s proposed Adequate Minimum Wage Directive – have their own history, complexities and challenges. It is suggested, however that there are a set of envioning conditions that are constraining and incentivising the actors towards a more meaningful, open and constructive engagement on these issues. There are elements and aspects of each policy issue moreover that can unlock constraints , open up new possibilities and foster consensus in the others, which is why it is key to explore them in an integrated manner as part of a strategic review. This serves to create a more fertile ground for problem solving deliberation that could potentially not only foster agreement on policy reforms but also actually reframe collective bargaining and engagement as a key policy instrument for increasing innovation, enhancing productivity and promoting fairness and inclusivity (see Figure 1). The next three sections of this paper sets out the context for each of the three aforementioned employment relations policy issues being considered by the High Level Group – collective bargaining and trade union recognition; statutory wage-setting mechanisms and the EU’s proposed Adequate Minimum Wage Directive.

Figure 1: An Opportunity to Revise and Reframe the Industrial Relations Regime



## 3. Collective Bargaining and Trade Union Recognition: A (Partial) Irish Solution to an Irish Problem

### 3.1 Introduction

The High Level Group under LEEF has been asked to examine the issues of trade union recognition and the implication of the same on collective bargaining processes and consider the adequacy of the workplace relations framework for the determination of pay and conditions of employment having regards to the legal, economic and social conditions in which it operates. A key impetus for undertaking this review at the current juncture is the perception, particularly within the trade union movement, that the previous attempts to resolve the ‘thorny’ issues of trade union recognition and statutory protection for collective bargaining through ‘Right to Bargain’ legislation has in practice had only a limited impact on the employment relations regime.

### 3.2 A Voluntarist Regime

The Irish system of employment relations, has traditionally been classified as ‘voluntarist’, where the preference is for joint trade union and employer regulation of employment relations and the relative absence of legal intervention. In such a model, the primary role of the State is to provide a supportive framework for voluntary collective bargaining, which should be the principal means by which the employment relationship is regulated. In particular, the State establishes the legislative framework and provides the institutional architecture –e.g. the Workplace Relations Commission and the Labour Court – that supports parties in their efforts to reach a ‘voluntary’ agreement. By contrast, statutory intervention in the relationship should be avoided (Doherty, 2016).

It is argued that that a combination of falling trade union density and voluntary collective bargaining coverage, the parallel expansion in individual employment rights – many derived from EU legislative action – and the greater use of mandatory outcomes in cases involving collective bargaining, has resulted in a discernible decline in voluntarism (Dobbins, 2005; Doherty, 2016). This has been characterised, by some commentators, as a transition from a bargaining-based employment relations system to a rights-based system.<sup>3</sup> Although voluntarism remains an integral feature of the Irish industrial relations landscape it would appear that it is considerably less ‘voluntarist’ than had traditionally been the case (Eustace, 2021). It may actually be ‘a form of regulated voluntarism’.<sup>4</sup> As outlined in Section 10 voluntarism and the law can actually have a mutually supportive relationship rather than necessarily operating as competing regimes.

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<sup>3</sup> See discussion in Dobbins, T. (2005).

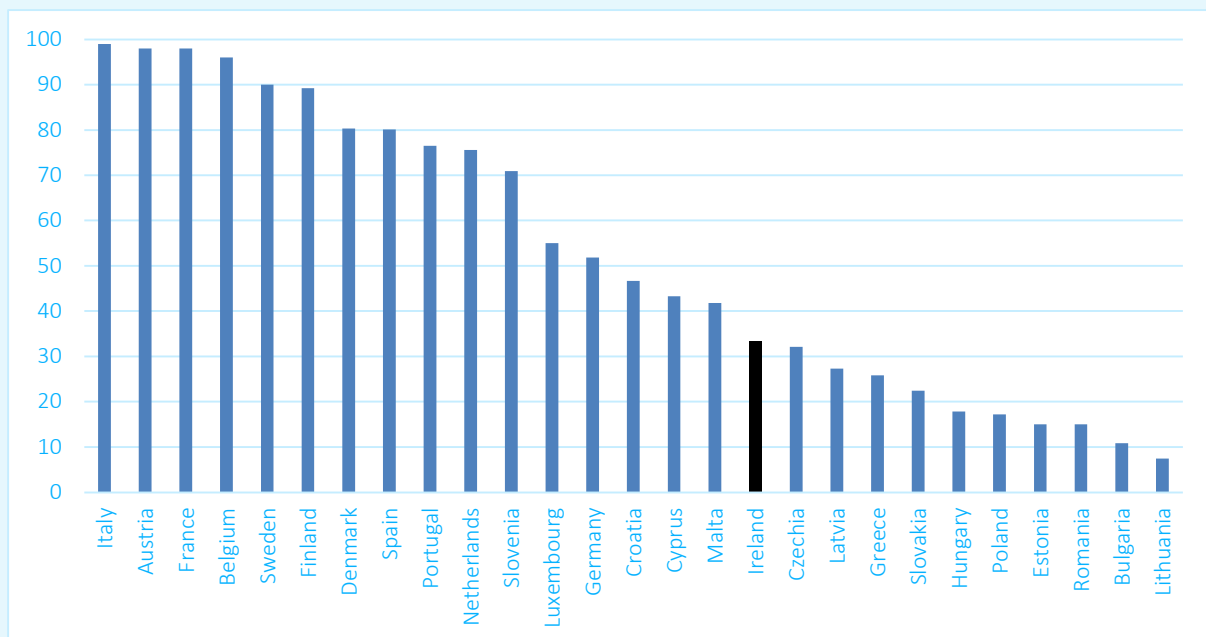
<sup>4</sup> Eustace notes that Quinn (1999) described the Irish employment relations regime as a ‘unique form of regulated voluntarism’.

### 3.3 Trade Union Density and Collective Bargaining Coverage

Trade union density has continued to fall in Ireland, declining from 36 per cent of employees in 2003 to approximately 25 per cent in 2017 (Walsh, 2018). The decline in density has been even more precipitous in the private sector, falling from 27 per cent to 14 per cent in the same period. This reduction in trade union density is the result of a complex set of institutional and structural factors including structural changes in the economy; a hardening of employer's preferences for non-unionism; labour and product market changes; new patterns of working and the lack of statutory protection for union recognition (Cullinane and Dobbins, 2020; Roche, 1997; 2001).

Ireland has experienced a concomitant decline in collective bargaining coverage. Ireland's current rate of collective bargaining coverage is 33.5 per cent (see Figure 2).<sup>5</sup> Eustace (2021) indicates that this figure is the second lowest in the EU14, ahead of only Greece, and less than half of the EU14 average of 73 per cent. The same author contends that in 'voluntarist' regimes where the state does not intervene in the bargaining process and there is no statutory obligation to negotiate with trade unions, high bargaining coverage is dependent on high levels of union membership. As outlined above trade union density has continued to fall in Ireland.

**Figure 2: Collective Bargaining Coverage: Share of Employees Covered by Collective Agreement (%)**



Source: ILOSTAT (2021)

<sup>5</sup> <https://ilostat.ilo.org/topics/collective-bargaining/>

### 3.4 The Constitutional Conundrum

Ireland has never introduced legislation that provides for statutory trade union recognition and there is also no legal right to direct negotiations between employers and unions (Dobbins *et al.*, 2020; Doherty, 2016; 2019). This situation is premised on the legal presumption that the Irish Constitution (1937) represents a barrier to statutory trade union recognition and the affording of a legal right for unions to engage in collective bargaining. Although the Constitution guarantees citizen's rights to form associations and trade unions this has been interpreted by the Irish Courts as not imposing any obligation on employers to recognise such bodies or to engage in collective bargaining (Doherty, 2016; Eustace, 2021). In other words while employees have the right to freedom of association, employers are also 'free' to not recognise trade unions and to not engage in collective bargaining. Consequently, with regards to collective employment rights, Ireland provides notably weak legal protection for collective bargaining and collective worker representation (Doherty, 2016). There are, unlike a number of EU member states, few statutory institutional mechanisms for extending collective bargaining agreements beyond individual workplaces thus extending potential coverage (Eustace, 2021).

A prevailing legal opinion is that it is not possible under the current wording of the Irish Constitution to introduce national legislation guaranteeing union recognition and a right to collective bargaining as the Supreme Court has held that employers can lawfully refuse to recognise unions and/or engage in negotiations. Any domestic legislation with the effect of compelling an employer to recognise a trade union for the purposes of collective bargaining is considered to be legally very vulnerable in light of the Supreme Court ruling in the *Ryanair* (2007) case (DETE, 2021). In this ruling Justice Geoghegan adverted to the potential unconstitutionality of any action designed to force an employer to deal with trade unions. Overall the Supreme Court has remained firm in its support for the individual right to disassociate as a corollary of the right to associate. Given the absence of a case, which decides this point, it is not possible to precisely describe the constitutional position. The DETE (2021) conclude that the scope for the Oireachtas to pass any law which would require mandatory trade union recognition is contested. This has led some to suggest that achieving mandatory trade union recognition rights and an express right to collective bargaining would require a constitutional referendum on the issue and if successful a subsequent constitutional amendment.<sup>6</sup> Interestingly the prominent employment lawyer, Anthony Kerr SC, has challenged this legal view arguing that he sees no constitutional foundation whatsoever for the proposition that no law can be passed to compel an employer to engage in collective bargaining or to recognise a trade union (Prendergast, 2021c; Sheehan, 2001).<sup>7</sup> Mr Kerr also contends that international jurisprudence does not, in his opinion suggest that an employer has a right not to engage in collective bargaining (Prendergast, A. 2021c).

Historically, given this lack of statutory based recognition, unions sought to secure workplace recognition through voluntary industrial relations procedures. Under the Industrial Relations Act 1969 section 20, trade unions were able to bring a claim for union recognition to the Labour Court. This process has received some criticism from employers who maintain that all such requests result in a recommendation for recognition regardless of the arguments made to the contrary by the employer concerned (DETE, 2021). Such recommendations, however, are voluntary in nature and as such there is no legal obligation on an employer to recognise a trade union irrespective of the Court's determination. Trade unions have thus questioned how effective this provision is in practice.

<sup>6</sup> A number of trade unions have called for a constitutional referendum to remove the constitutional impediment to trade union recognition and the right to collective bargaining. In their 2020 General Election manifesto the Labour Party committed to guaranteeing everyone the right to be represented at work by a trade union and requiring that employers negotiate with their employee's representative, including through constitutional change if required. See <https://www.labour.ie/manifesto/better-pay-job-security/>. A number of trade unions have also called for a constitutional referendum on this issue.

<sup>7</sup> A similar perspective was made by the lawyer A.J. Twomey in a paper on the 2001 Industrial Relations Act presented at the IRN Conference 2001. While recognising that Justice McWilliams stated in the *Abbot and Whelan* case that the Constitution did not impose a duty on employers to negotiate with trade unions Mr Twomey suggest that this 'falls a long way short of holding that no such duty can be imposed on employers by legislation'.

### 3.5 The Right To Bargain – An Irish Solution to an Irish Problem

The lack of statutory union recognition and strong legislative protection for collective bargaining remains highly problematic for the Irish trade union movement especially as trade union density and collective bargaining coverage continues to decline. In the UK, despite the strong voluntarist tradition, the Labour Government introduced a statutory union recognition procedure in Schedule A1 of the Employment Relations Act 1999. It is worth noting that this has not proved to be a panacea for either falling trade union density or decreasing collective bargaining coverage as both have continued to decline despite this legislation.

In contrast, reflecting the aforementioned constitutional context and the prevailing voluntarist tradition, the state, in consultation with the social partners, sought to address this issue through the introduction of what is termed as the ‘Right to Bargain’ legislation (2001 – 2004 – 2015). This legislation aimed to resolve the vexed issue of workplace bargaining rights via the establishment of collective dispute resolution procedures that combined both statutory and voluntary provisions (Dobbins *et al.*, 2020; Doherty, 2016). This approach was considered to represent an ‘Irish solution to an Irish problem’.

In the late 1990s, under the auspices of the national level social partnership process, a Governmental Working Group was established to review the issue of statutory trade union recognition. The Commission not only identified the ‘constitutional barrier’ to statutory recognition but also articulated the key role of voluntarism within Ireland’s political economy. In particular, there was concern within the policy and political system that any strong break from the prevailing voluntarist approach to union recognition would potentially constrain Ireland’s capacity to continue to attract mainly non-union US multinational corporations (Cullinane and Dobbins, 2016). It is worth highlighting that from the early 1980s onwards the IDA had discarded its policy of encouraging MNC’s to negotiate pre-entry ‘closed-shop’ agreements. In the context of an increasingly competitive environment for FDI, it is suggested that they tacitly promoted the lack a legislative requirement for union recognition to potential investors (Gunnigle, 1999). Indeed the employment relations consultancy Stratis strongly contends that affording companies the flexibility to adopt an employment relations model of their choosing, remains an integral part of the ‘package’ that attracts high levels of FDI to Ireland (Stratis 2021). Consequently, despite policy developments in the UK, the Commission refrained from proposing the adoption of statutory union recognition and instead recommended the establishment of new dispute resolution procedures to address collective disputes in firms where collective bargaining did not take place. The Working Group’s recommendations were encapsulated into the Industrial Relations Amendment Act 2001 and subsequent 2004 Miscellaneous Provisions amendment (IRAA 2001-04). This legislation is commonly referred to as ‘The Right to Bargain’ legislation (or Right to Bargain provisions).

### 3.6 ‘The Right to Bargain’ Legislation

The Industrial Relations Amendment Act 2001 established dispute resolution procedures that enabled unions to represent members in firms which did not engage in collective bargaining with unions, by applying to the state’s third party dispute resolution institutions – the Labour Relations Commission and the Labour Court – to resolve collective disputes over remuneration, terms and conditions and/or dispute resolution procedures (Cullinane and Dobbins, 2016; Doherty, 2016).

Under this legislation, trade unions, in firms where collective bargaining was absent, could refer unresolved local disputes on pay and conditions to external third-party state institutions for a ruling on these matters. This ruling was based on comparing collective bargaining outcomes in unionised workplaces with the pay and conditions of unionised workers in firms where the employer did not engage in collective bargaining.

The first stage of the process involved submitting the disputed items to the Labour Relations Commission for conciliation and if this did not generate an agreed resolution the Labour Court could then issue a recommendation on pay and conditions for the workers in question. If the Labour Court’s ruling was not accepted by the employer the union could request that the Labour Court issue a binding recommendation that was enforceable in the civil courts. The Labour Court rulings were based on comparing the pay and conditions of the employees in question with ‘comparable’ employees in firms which engaged in collective bargaining with trade unions.

In 2004 the Industrial Relations (Miscellaneous Provisions) Act 2004 implemented a number of new measures designed to enhance the effectiveness of the ‘right to bargain’ dispute resolution procedures’ established by the Industrial Relations (Amendment) Act 2001. The main change was an enhanced voluntary Code of Practice that was designed to substantially reduce the timescale for resolving disputes down to twenty-six weeks – up to maximum of thirty-four weeks where necessary – to the point of issuance of a binding determination by the Labour Court.<sup>8</sup> Importantly these ‘compromise’ changes negotiated under the context of the social partnership agreement Sustaining Progress, delivered ‘something’ for both employer and unions (Dobbins, 2004). The new fast track approach to resolving disputes and the Code of Practice on Victimisation were particularly welcomed by the trade union movement. Although the new measures enhanced the effectiveness of the ‘right to bargain’ procedures significantly for the employers they did not alter the position regarding a statutory provision for union recognition and collective bargaining which remained subject to voluntary agreement (*ibid.*). IBEC also welcomed the balanced approach evident in the new Code of Practice on Victimisation.

Between 2002 and 2014, the Labour Court issued 109 recommendations under this legislation, 82 of which occurred between 2004 and 2006, following the introduction of fast tracking process under the IRAA 2004 (and prior to the legal challenge by Ryanair which is discussed below).<sup>9</sup> The Labour Court also issued twenty-eight binding recommendations in the period 2002-2004. Prior to 2007, there was evidence of progressive growth in the utilisation of these procedures across both the ‘voluntary’ and statutory ‘fall back’ stages (Cullinane and Dobbins, 2016). At the same time union penetration into the MNC non-union sector was modest (*ibid.*). Labour Court recommendations, which were targeted primarily at indigenous SME employers, were predominantly supportive of union claims, though the court did reject a significant minority of claims.

Labour Court’s recommendations that backed the trade union claims did deliver pay rises, enhanced terms and conditions and improved access to procedures for a relatively modest number of workers in non-unionised firms (Cullinane and Dobbins, 2014) The use of the ‘good employer’ benchmark also provided for sick pay schemes and grievance procedures that were previously absent (*ibid.*). These procedures effectively created an indirect or shadow form of arms-length collective bargaining as the recommendations tended to ‘shadow’ the terms and conditions delivered by collective bargaining in comparator unionised settings.

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<sup>8</sup> Dobbins (2004) notes that some cases were taking up to two years or more to reach finality.

<sup>9</sup> Between 2001 and 2004 there were on average 26 cases a year under this legislation. Following the introduction of the fast-track procedure this increased to 65 a year between 2004 and 2007 (Cullinane and Dobbins 2016; Dobbins et al., 2020).



These procedures effectively established an alternative route to collective representation – in terms of achieving collectively bargained outcomes for employees - by using a model of third party regulatory oversight that circumvented temporarily the controversial issue of statutory workplace recognition by establishing a Right to Bargain (Dobbins *et al.*, 2020). Trade union recognition was not one of the ‘disputed’ matters that could be addressed under this legislation. ‘An Irish solution to an Irish problem’.

Doherty (2016) highlights that the Labour Court’s approach of legally mandating the payment of prevailing industry rates or pay norms - generally reached through employer–union negotiations - rather than statutory minima, began to veer towards the legislation performing a more explicit regulatory and public function than initially appeared likely.

There is also no evidence that engagement with these procedures and/or acceptance of Court rulings served to indirectly prompt employers towards establishing ongoing relationships with unions or ceding formal recognition. Overall, the procedures up until 2007 did provide a mechanism for unions to secure procedural and substantial gains, albeit this was not always a straightforward process given some instances of employer opposition. The design of the procedures under this legislation also conferred benefits on employers as it largely freed them from direct union involvement so long as their terms and conditions were not out of line with sectoral norms.

### 3.7 The Ryanair Supreme Court Challenge 2007

In 2007 Ryanair successfully challenged the Right to Bargain legislation in the Supreme Court. The Supreme Court’s judgement held that negotiations, between Ryanair and Staff Groups, which were not trade unions, could amount to collective bargaining for the purposes of the Act in question. The Supreme Court stipulated that the Labour Court had not adequately investigated whether or not it had the jurisdiction to deal with the dispute question. Finally the Supreme Court was also highly critical of the procedures adopted by the Labour Court in hearing claims under the legislation, for example in not requiring the identification of employees in dispute and not requiring such employees to give oral evidence (Doherty, 2016)

This judgement from the Supreme Court by introducing greater legal complexity into the procedures set out by the legislation and substantially altering the interpretation of the ambit of the 2001 Act, effectively nullified its effectiveness (DETE, 2021; Doherty, 2016). From the trade union’s perspective, the 2007 ruling rendered the legislation obsolete and they effectively stopped using it, with only six cases referred to the Labour Court between 2008 and 2014. Employers rejected this interpretation, maintaining that the 2007 ruling served to impose fairer standards, consistent with constitutional rights, on those (the Labour Court) interpreting and implementing them (DETE, 2021).

### 3.8 Industrial Relations (Amendment) Act 2015

In 2015, the Government sought to address the impact of the Supreme Court ruling on the Right to Bargain procedures with the passing of the Industrial Relations Amendment Act (IRAA) 2015. The main provisions for the operation of the bargaining procedures under this legislation are set out in Box A.

**Box A: Industrial Relations Amendment Act: Key Provisions**

- A definition of what constitutes ‘collective bargaining’,

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- Provisions to help the Labour Court identify if internal bargaining bodies are genuinely independent of their employer and not under their domination or control,

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- Bringing clarity to the requirements to be met by a Trade Union in advancing a claim,

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- Policies and principles for the Labour Court to follow when assessing those workers’ terms and conditions, including the sustainability of the employer’s business in the long-term,

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- New provisions to ensure cases dealt with are ones where the number of workers are not insignificant,

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- Provisions to ensure remuneration, terms and conditions are looked at in their totality,

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- Provisions to ensure that there is some management of the permitted frequency of reassessment of the same issues, and

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- Enhanced protection by way of interim relief in the case of dismissal for workers who feel that they are being victimised for exercising their rights under the proposed legislation.

Source: DETE (2021: 3).

This legislation, which ensured the retention of the voluntary system, aimed to provide a mechanism by which the fairness of the employment conditions of workers in their totality could be assessed in employments where collective bargaining does not take place (DETE, 2021). The DETE contend that this legislation remediated the 2001 Act to ensure that where an employer does not engage in collective bargaining - either with a trade union or internal excepted body – and where the employees on whose behalf the case is being pursued is not insignificant, there was now an effective framework to allow trade unions to have the remuneration and pay and conditions of members in that employment assessed against relevant comparators and determined by the Labour Court if necessary. As with the previous statutory initiatives, the 2015 Amendment was very much a ‘balancing exercise’ aimed at securing support from both the ICTU and Ibec. Thus while unions were somewhat unhappy with the new ‘comparability requirements’ their perspectives with regards victimisation, proof of membership and excepted bodies was well reflected in the final legislation (Sheehan, 2015a). In this context the Secretary General of the ICTU’s pragmatic response to the new procedures was that unions should ‘embrace the value of these mechanisms’ (Sheehan, 2015b).

Interestingly the 2015 legislation set out a new definition of collective bargaining:

*collective bargaining comprises voluntary engagements or negotiations between any employer or employers’ organisation on the one hand and a trade union of workers or excepted body to which this Act applies on the other, with the object of reaching agreement regarding working conditions or terms of employment, or non-employment, of workers.<sup>10</sup> (Industrial Relations Amendment Act, 2015, s 27).<sup>11</sup>*

<sup>10</sup> Industrial Relations (Amendment) Act 2001, s 1A, as inserted by the Industrial Relations Amendment Act 2015, s 27.

<sup>11</sup> This was essentially the working definition of collective bargaining that was used by the Labour Court pre the 2007 Ryanair Ruling (Sheehan, 2015a).

It was suggested that this definition of collective bargaining in conjunction with the definition of an ‘excepted body’ created greater scope for collective disputes to be referred to the Labour Court for the first time since the Ryanair ruling (DETE, 2021).

Under the 2015 legislation the Labour Court, in making a recommendation on terms and conditions of employment, must consider the ‘totality’ of the remuneration and conditions of employment of the workers concerned, by reference to the remuneration and conditions of employment of comparable workers, explicitly including those working in non-unionised workplaces.

The explicit inclusion of non-union employees as comparators was criticized by unions as it was seen as weakening the potential collective bargaining ‘premium’ inherent in favourable recommendations, making it harder for trade unions to secure better terms and conditions (Cullinane and Dobbins, 2016; Sheehan, 2015a). Equally, it undermined the capacity of the legislation to provide a form of indirect or shadow collective bargaining. Doherty (2016) indicates that the amendments introduced in response to the Ryanair judgement served to circumscribe the Labour Court’s benchmarking role, in terms of incorporating prevailing pay norms and standards set by collective agreements into their recommendations.

For trade unions establishing appropriate comparators has proven to be a time-consuming, costly and protracted process and they have in particular struggled to gather accurate information from non-union establishments. The procedural requirements for comparability substantially raised the burden of proof required from unions and this along with increased case duration has served to limit the appeal of this legislation. While more stringent evidential requirements are conducive to due process and procedural legitimacy the trade-off can often be procedural inefficiency and/or complexity.

Despite the contention that the amendments introduced in 2015 created an effective framework for assessing the pay and conditions of union members in a non-union setting, it is recognised that in practice the utility of the legislation has been extremely limited as highlighted by the very low number of referrals under this act (DETE, 2021; Dobbins *et al.*, 2020) Since its introduction in 2015 there have been just twelve referrals under these dispute resolution procedures with six cases proceeding to the hearings stage. Furthermore, trade unions have only taken four cases, in six years, through the full procedural route under this legislation.

The extremely limited usage of these amended dispute resolution procedures suggests that trade unions see them as offering less potential for securing bargaining rights compared to the regulatory framework that operated in particular between 2004 and 2007. For the trade union movement IRAA 2015 would appear to provide neither an adequate nor a stable solution to advancing bargaining rights for union members in firms that do not engage in collective bargaining.

The perceived limitations of the 2015 legislation has also facilitated a recourse to the traditional voluntarist route to trade union recognition in the guise of Section 20 of 1969 Act. Compared to the IRAA 2015 procedures this process is quicker and less legalistic and there is a presumption that the Labour Court will always provide a recommendation favouring trade union recognition. As noted previously this is one of the key critiques of this process from the employer’s perspective. At the same time, these ‘favourable’ rulings from the Labour court are non-binding on the employers concerned and as such there is an awareness that the 1969 route is not a long-term tenable solution to the issue of statutory trade union recognition.

After over twenty years of working groups, peak-level negotiations, various legislative initiatives and legal challenges mandatory trade union recognition and the associated issue of a statutory right to collective bargaining remain problematic and contested policy challenges within the industrial relations landscape. At one level, you could argue that the actors find themselves back at the position, which existed pre the introduction of the 2001 Act. Alternatively this paper proposes that there is now exists a potential opportunity to make progress on this vexed issues. In part, there is the learning from the experience of the last 20 years. Secondly it is suggested that the other industrial relations issues that the actors are engaging with, in the context of this review, actually opens up possibilities for a new approach and new thinking around recognition and collective bargaining. The potential for progress moreover is reinforced by the combination of factors that are constraining (pulling) and incentivising (pushing) the state and the social partners towards the negotiation of an agreed response to this longstanding and complex policy challenge (see Figure 1).

## 4. Statutory Wage Setting Mechanisms: Protecting and Promoting Collective Bargaining

### 4.1 Introduction:

As was discussed in the previous section the lack of a statutory right to engage in collective bargaining has ensured that the Irish industrial relations regime has been characterised by comparatively weak legal protection for collective bargaining and collective worker representation. Interestingly, notwithstanding this constitutional context, there has existed since 1946 a range of statutory wage setting mechanisms that have both protected and promoted de facto collective bargaining in specific industries and sectors (Doherty, 2016; Eustace, 2021). This section considers how a series of legal challenges and subsequent legislative responses have, in conjunction with growing employer opposition to and/or apathy for such procedures, served to not only reconfigure this statutory architecture but also arguably weaken its effectiveness in promoting and protecting collective bargaining (Doherty, 2016; Eustace, 2021).

### 4.2 Statutory Wage Setting Mechanisms:

#### Registered Employment Agreements (REAs)

Under Part III of the Industrial Relations Act 1946 a party to a collective agreement could apply to the Labour Court to have that agreement registered as a Registered Employment Agreement (REA) which made it binding on all parties operating in that sector. REAs at the sectoral level, made between the main employer body representing employers, and the trade unions representing workers in the relevant sector, were traditionally the most significant statutory wage-setting mechanism (particularly in the construction sector) and had an *erga omnes* effect where applied (Doherty, 2016). For example, a REA setting minimum terms and conditions in the electrical contracting sector operated between 1990 and 2013.<sup>12</sup> Statutory mechanisms that increase collective bargaining coverage by extending the application of a sectoral collective agreement to all employers in a sector is a well-established feature of labour law systems across Europe. The REA's in this context functioned as an Irish version of such extension arrangements.

#### Joint Labour Committees (JLCs) and Employment Regulation Orders (EROs):

Secondly, Part IV of the Industrial Relations Act 1946 provided for the sectoral regulation of pay and conditions through tripartite bodies known as Joint Labour Committees (JLCs). Each JLC is comprised of an independent chairperson, appointed by the Minister and an equal number of worker and employer representatives. If the JLC reached agreement they could propose an Employment Regulation Order (ERO) which, when confirmed by the Labour Court, set legally binding minimum wages and conditions of employment in the respective sector. The ERO in practice had the same status of as an REA, in terms of an *ergo omnes* impact. Importantly, JLCs set minimum standards for remuneration and other terms and conditions of employment in labour intensive sector –hotels, agriculture, security, catering, cleaning, hairdressing and retail grocery - that were traditionally characterised by low pay, low trade union density and little or no collective bargaining.

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<sup>12</sup> Interestingly both the Electrical Contractors Association (ECA) and the Connect trade union have noted that there has been an industry agreement for electrical contractors since 1922.

Doherty (2016) indicates that in 2007 existing EROs were setting legally binding conditions in the following areas;

- minimum sectoral rates of pay in excess of the national minimum wage;

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- sectoral pay scales, based on length of service and skill level;

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- sectoral overtime payments and premium payments to those required to work Sundays; and

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- other benefits for employees in the relevant sectors that were not provided by general employment legislation notably a right to sick pay.

Although voluntarism, the lack of statutory trade recognition and the absence of a legal right to engage in collective bargaining have undoubtedly shaped the evolution of the industrial relations regime, these legislative provisions allowed for the evolution of a less encompassing, but parallel tradition, of the state and the social partners using statutory mechanisms to set (minimum) standards for remuneration and other terms and conditions of employment in a number of sectors.

*..both the REA and JLC systems represented a significant departure from the Irish (indeed Anglo-American) norm, in that the terms and conditions of employment were not settled through direct contractual negotiations between the employer and its workers, but rather, employment standards were set, and applied, not only for employers that recognised trade unions and union members, but also for employers which did not engage in collective bargaining. (Doherty, 2016:3)*

Having operated for over six decades, the next section explores how a series of legal challenges, legislative responses to these rulings and growing employer opposition and/or disengagement have served to reshape the statutory wage setting architecture and constrained its capacity to promote and protect collective bargaining.

### 4.3 A System Under Pressure: Legal Challenges, Legislative Reforms and Employer Disengagement:

In terms of legal challenges to the workings of the statutory wage setting mechanism employers have always had the option of challenging the making of individual EROs (e.g. *Burke V Minister of Labour* [1979] I.R. 354) or the registering of particular employment agreements (Kerr, 2014). Over the last decade, however, the actual constitutional robustness of these statutory mechanisms have been subject to a number of legal challenges and the associated judgements have found that the relevant sections of the 1946 Act were contrary to the provisions of Article 15.2 of the Constitution in relation to law-making (DETE, 2021; Doherty, 2016; Eustace, 2021; Kerr, 2014).

In 2011, in the case of *John Grace Fried Chicken Ltd., V Catering JLC*, the High Court declared that the legislation allowing for the binding imposition of terms and conditions by means of an ERO was unconstitutional as it amounted to an impermissible delegation of legislative power from the Dáil to the Labour Court. As result of this decision all existing JLCs were suspended. Following an independent review of the JLCs, carried out at the behest of Government by Kevin Duffy and Frank Walsh, the Government introduced the Industrial Relations (Amendment) Act 2012, which established a revised statutory framework for the JLCs and ERO system (DETE, 2021). This Act also reformed the procedures for REAs, in particular, outlining the detailed criteria by which the parties could claim to be ‘representative’ before registering collective agreement.

In May 2013, several months after this legislation was passed, the Supreme Court in the case of *McGowan v The Labour Court*, declared that the entire part of the legislation establishing the REA system (Part III of the Industrial Relations Act 1946) was invalid on the basis that it amounted to an unconstitutional delegation of legislative power from the Parliament to autonomous parties to collective bargaining (Doherty, 2016; Kerr, 2014). The 2012 Act had purported to amend Part III of the Industrial Relation Act 1946 to make it more constitutionally robust, however this ruling rendered these amendments meaningless (Kerr, 2014).

These two judgements ensured that in quick succession the courts had struck down, , two pillars of the Irish industrial relation regime – EROs issued by the JLCs and REAs negotiated by unions and employers – on the basis that they amounted to an unconstitutional delegation of legislative power from the Dáil. As a result of these two decisions, seventeen EROs and seventy REAs were invalidated, between 2011 and 2013, affecting the pay and conditions of thousands of workers.

In response, the Government introduced the Industrial Relations Amendment Act 2015 which sought to reform the REA system in light of the McGowan judgement. This legislation also carried over the reforms of the JLC system that were originally included in the 2012 Act in response to the John Grace case.

In re-establishing the REA system the 2015 Act set out the factors that the Labour Court must take into consideration when the parties wish to register a collective agreement, namely:

- It must be ‘normal and desirable practice or expedient’ to have a separate agreement for that class, type or group of workers; and
- Applicants must be ‘substantially representative of the workers in questions.’

The Act also states that REAs must promote ‘harmonious relations’ and avoid ‘industrial unrest’.

Critically, however, under the new system, REAs were now only binding on workers and an employer or employers, that are parties to the agreement. In other words there is no sectoral *erga omnes* effect. Although the re-establishment of the REA system was welcomed by trade unions the Court’s decision undoubtedly weakened it by removing its capacity to set sectoral standards and increase collective bargaining coverage within a sector.

In part to compensate for the changes introduced to the REA system, the Industrial Relations (Amendment) Act 2015 also established a new process for securing universally applicable and binding sectoral terms and conditions in the form of Sectoral Employment Orders (SEO). Under this new statutory wage setting mechanism, a trade union and/or an employers’ organisation which is ‘substantially representative’ of any given sector of the economy can request that the Labour Court examine the terms and conditions relating to the remuneration and any sick pay scheme or pension scheme, of the workers of a particular class, type or group in an economic sector. On the conclusion of its investigation the Labour Court can submit a report to the Minister recommending the introduction of a Sectoral Employment Order (SEO) covering the issues contained in the report. Given previous legal rulings with regards the unconstitutionality of delegating legislative powers to the Labour Court or bargaining parties, the Minister must seek the approval for a new SEO in the form of a resolution of both Houses of the Oireachtas. Once a SEO is confirmed by the Dáil its terms and conditions are automatically written into the contracts of employment of the relevant workers in a sector/industry. Although clearly presented as a form of state regulation, the SEO system could be, and was, used as a means of ‘bargaining by the back door’ (Eustace, 2021b). Under section 14, Trade unions and employers could ask the Labour Court to recommend that a SEO adopt the terms of a pre-existing collective agreement, thereby effectively extending that collective agreement to the whole sector.

This is what occurred with regards to the Electrical Contracting SEO 2019 as the Labour Court adopted more-or-less in their entirety the terms of the existing national agreement –which had been negotiated by Connect trade union and two established employer associations – into its report on a proposed SEO to the Minister. This Electrical Contracting SEO 2019 was however soon the subject of a legal challenge when the National Electrical Contractors of Ireland (NECI) applied to the High Court for an order striking it down. The NECI also applied for an order to declare as unconstitutional the 2015 legislation establishing the SEO process.

In the subsequent 2020 High Court Judgement, Judge Simon ruled that the Minister had acted ultra vires in promulgating a SEO on the basis that the procedures adopted by the Labour Court were deficient and did not comply with procedures set out under the Act. The Judge also ruled that the SEO system was unconstitutional as again it represented an impermissible delegation of legislative power to the Labour Court. The Judge ordered that the Sectoral Employment Order (Electrical Contracting Sector) 2019 be struck down immediately and placed a stay on the invalidation of the 2015 Act.

This ruling was perceived as another ‘legal’ blow to the state’s protection and promotion of collective bargaining and sectoral standard setting. In response, the Government brought an appeal against the High Court’s judgement to the Supreme Court. While the Supreme Court upheld the High Court’s quashing of the electrical contracting SEO, critically it overturned its finding that the legislation underpinning this system was unconstitutional on the grounds of the delegation of too much power to the Labour Court (Higgins, 2021a; 2021b).<sup>13</sup>

This ruling by the Supreme Court is viewed as making the statutory system for issuing SEOs more legally secure and potentially it could provide a stronger foundation for expanding collective bargaining coverage in specific sectors. Following this judgement a new application for an SEO in the electrical contracting sector covering approximately 16,000 workers was immediately lodged with the Labour Court. This was subsequently signed into law in December 2021 and came into effect in February 2022. This judgement also ensured that two outstanding SEOs for general construction and mechanical engineering –covering 50,000 and 10,000 workers respectively – were able to continue through the Labour Court process with the General Construction SEO signed into law in November 2021. The upholding of the constitutionality of the process may also galvanise trade unions to seek SEOs in other sectors for example in the meat processing and wind energy areas.

At the same time the process remains exposed to ongoing legal challenges and in March 2022 the NECI brought a fresh High Court challenge against the new SEO for electricians working for electrical contracting firms (O’Faolain, 2022). Significantly the State has agreed to the High Court giving an order of ‘certiorari’ quashing the SEO for electrical contracting that had come into effect on February 1 2022 (Higgins, 2022f). The issues on which Department of Enterprise Trade and Employment is understood to have conceded relate to errors in the actual SEO recommendation and as such they are particular to this specific SEO rather than the overarching legislative framework.

The aforementioned Supreme Court ruling may also indirectly have helped to strengthen the legal robustness of the JLC wage setting-system as there was concern that the aforementioned High Court ruling on the unconstitutionality of SEOs was equally applicable to similar provisions in the 2012 Industrial Relations Act concerning JLCs and EROs.<sup>14</sup> Although the ‘legal bar’ may have been raised by this ruling it did not prevent three security companies from seeking, and securing a high court ex-parte injunction against the new security sector ERO. This ensured that the new ERO cannot be implemented until substantive legal challenges by the three companies have been resolved thus delaying the awarding of imminent pay increases by potentially anything up to 12 months. Indeed while most employers in the security sector are supportive of the proposed increases several security employers, who are members of the Security Employer Association (SEA) have made it clear to the Labour Court that they are contemplating a further High Court challenge to the sectoral wage setting in their industry (Higgins, 2022c). At the same time a new ERO, affording pay increases to 30,000 workers in the contracting cleaning industry was approved by the Minister for Business, Employment and Retail in March 2022 (Higgins, 2022b).

Despite a series of protracted legal challenges the constitutionality of the statutory wage setting mechanisms has been upheld and they remain intact. At the same time the ongoing legal challenges are creating substantial delays in the process for agreeing and approving new orders. They also serve to generate greater levels of uncertainty and this combined with the length of time it is taking to agree certain sectoral pay orders could potentially undermine both the effectiveness of, and confidence in, these statutory processes.

<sup>13</sup> Naisiunta Leictreacht (NECI) V Labour Court & Ors [2021] IESC 36.

<sup>14</sup> A group of four security firms objecting to that industry’s ERO argued in the Labour Court in January 2021 that the High Court ruling on SEOs could be applied to similar provisions with regards the ERO process in the 2012 Industrial Relations Act (see Higgins (2021b)).

## 4.4 Exerting a Veto

The series of legal challenges that have emerged over the last decade are indicative of a growing hostility among certain sections of employer towards the state's statutory wage mechanisms. Indeed as is discussed below a feature of this period has been the emergence of clear demarcation between employer representative bodies who favour such processes and those within the same sectors who are strongly opposed to them.

The robustness and effectiveness of these statutory mechanisms has also been impacted by employer disengagement from the operation of the JLC system in particular. This reflects the fact that the operation of the JLC system, including the formulation of proposals, that can be subsequently given statutory effect, by the Minister through the issuing of ERO, is essentially voluntary in nature. This enables either party to effectively exercise a veto on the operation of an established JLC.

A Labour Court Review of JLCs (2018) indicated that only three of the eight JLCs had met since the undertaking of their previous review in 2013 namely hairdressing, the security industry and contract cleaning. It was only the latter two moreover that had formulated proposals resulting in making of an ERO, with two each being issued for these sectors between 2013 and 2018. Submissions to the Labour Court's 2018 review indicate very strong support for the three JLCs that had continued to meet in the preceding five years. In relation to the remaining five however the Labour Court (2018) states that the submissions 'demonstrate a polarity of opinion'. In particular the unanimous view of employer bodies was that five JLCs should be abolished – agricultural workers; hotels; retail, grocery and allied trades, catering (excluding Dublin and Dun Laoghaire) and Catering (Dublin and Dun Laoghaire). In contrast, the ICTU favoured their maintenance albeit proposing the amalgamation of the two catering JLCs.

This tangible lack of engagement with existing joint structures has continued as the Security and Cleaning JLCs continue to be the only two of the aforementioned eight that have met and formulated proposals since the 2018 review. The ability to exercise a veto has been criticized by the trade unions and interestingly several political parties 2020 election manifestoes contained commitments to reform and enhance the JLC system including removing the ability of employers and/or trade unions to exercise a veto in the setting of pay and conditions.<sup>15</sup>

At the same time the establishment of a new childcare JLC and the approval of two new Employment Regulation Orders that set sectoral minimum pay rates for approximately 27,000 childcare workers (Higgins, 2022e), indicates the potential of these arrangements to coordinate employer-worker engagement and extend collective bargaining coverage. The establishment of the Childcare JLC provided for the first time an opportunity for employers and employees, through their representative organisations to engage on pay and other issues including how to develop this key sector.

It is correct to a degree to suggest that the frailties within the statutory wage setting mechanism, identified by previous legal challenges, have been largely addressed by legislative reforms (DETE, 2021). The most recent Supreme Court ruling on the SEO system certainly suggests that the current system appears more constitutionally robust. As outlined in the preceding section the statutory wage setting mechanism remain exposed to 'legal challenges'. Indeed the emerging cyclical process of a statutory order being put in place, followed by a subsequent legal challenge and ruling, and then, depending on that ruling, a potentially new legislative response only serves to create uncertainties, protracted delays and a more contentious and fractious employment relations environment. This clearly contrasts with the underlying objectives of the JLC system which was designed to create a framework that enables the negotiation of consensus-based outcome that delivers for both employers and employees, promotes harmonious industrial relations and provides for greater certainty and stability. While the Irish Security Industry Association (ISIA) have traditionally been strong advocates of the JLC/ERO system they contend that the delay in implementing the current ERO for their sector is detrimental for both employees – who are not receiving expected pay increases - and for employers who are facing ongoing difficulties in recruiting staff.

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<sup>15</sup> See; Labour Party (2020) Building an Equal Society, [https://www.labour.ie/assets/files/pdf/labour\\_manifesto\\_web.pdf](https://www.labour.ie/assets/files/pdf/labour_manifesto_web.pdf); Green Party (2020) Towards 2030: A Decade of Change, [https://www.greenparty.ie/wp-content/uploads/2020/01/GREEN\\_PARTY\\_TOWARDS\\_2030-WEB-VERSION.pdf](https://www.greenparty.ie/wp-content/uploads/2020/01/GREEN_PARTY_TOWARDS_2030-WEB-VERSION.pdf); Sinn Fein (2020) Giving Working Families a Break: A Manifesto for Change. [https://www.sinnfein.ie/files/2020/Giving\\_Workers\\_and\\_Families\\_a\\_Break\\_-\\_A\\_Manifesto\\_for\\_Change.pdf](https://www.sinnfein.ie/files/2020/Giving_Workers_and_Families_a_Break_-_A_Manifesto_for_Change.pdf).



Equally the legislative reforms to date have not addressed the issue of one party being able to exercise an effective veto over the operation of the JLC, thus ensuring that while an institutional structure can be ‘legally’ still in place it can also from a practical perspective be effectively moribund. These two issues – the impact of ongoing legal challenges and in-built vetoes – suggest that the LEEF’s review of the statutory wage setting instruments is both timely and important. This paper contends that this review of the existing statutory instruments needs to be framed in the context of the other policy challenges discussed in this paper namely the right to bargain/trade union recognition and the EU’s draft Adequate Minimum Wage Directive in conjunction with the various the enviroing conditions that are influencing these policy spheres. This, it is suggested creates an opportunity to move from a reactive position – introducing reforms in response legal challenges to the current system – towards a more developmental approach which aims to harness the potential of these statutory provisions. In particular the focus needs to shift to the design of a more effective, evolving and flexible system that can both contribute to the progressive development of different sectors of the economy, support a more sustainable and inclusive labour market and also help to address other employment relations policy challenges. Indeed a reimagined system of statutory wage setting provisions could potentially contribute to the achievement of broader economic and social goals including the development of a more dynamic, fairer and inclusive labour market.

#### 4.5 A Polarity of Opinion

In the context of reviewing the operation of the statutory wage setting mechanisms it is worth considering the divergent views expressed by various stakeholders as to their impact, effectiveness and indeed relevance in the context of a modern 21<sup>st</sup> century economy.

With regards to existing SEOs there is a discernible division amongst employer organisations, as to the appropriateness of these statutory instruments, manifested in part by a sharp division between the interests of smaller and larger businesses in particular sectors. The NECI who brought the High Court case against the electrical contracting SEO, represent small and medium sized contractors, who they argue cannot afford to provide the same pay rates and range of employee benefits as larger employers in the industry (Higgins, 2021c). They contend that by imposing a sectoral norm for labour costs the SEO is an anti-competitive measure that operates to the detriment of their member’s interests.

This contention was addressed in the Supreme Court ruling with Justice McMenamin drawing attention to the fact that the principles and policies in relevant chapters of the 2015 Act are focused on a particular understanding of competitiveness to be seen as applying on the basis of factors such as productivity, efficiency, education and skill level of the labour force, as well as the quality of goods and services, and the degree of innovation. This understanding is to be contrasted with laissez-faire free market competition, sometimes based on reducing pay and salary levels.<sup>16</sup> The Supreme Court Judgement in the NECI case confirmed its acceptance that a key objective of the 2015 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.<sup>17</sup>

In contrast to the NECI, two long-standing employer bodies in the same sector, the Electrical Contractors Association (ECA) and the Association of Electrical Contractors (AECI), are strongly in favour of the SEO arguing that it promotes harmonious industrial relations, provides an orderly dispute mechanism and eliminates the opportunity to erode employment conditions as a means of securing projects (Higgins, 2021c). The Connect trade union have also robustly defended the ERO in this sector, given its capacity to maintain ‘minimum’ sectoral employment standards.

Similar differences of opinion amongst employer representative bodies are also evident in the other sectors in which SEO’s have been used. In the mechanical craft sector the Association of Plumbing and Heating Contractors of Ireland (APHCI) represents the majority of smaller employers in the sector, with approximately 500 members employing 3,000 employees. In their opinion the pay and conditions of the SEO is set by the largest players in the sector with no input from their organisation. Consequently, they perceive the SEO process as undermining the competitive position of their members (Higgins, 2021e).

<sup>16</sup> Naisiunta Leictreach (NECI) V Labour Court & Ors [2021] IESC 36

<sup>17</sup> Ibid.,

In contrast the CIF's MEBSA body, that represents large and medium sized contractors in the same sector, see the establishment of a 'level playing field' on costs as positive development as it removes the opportunity erode employment conditions as a means of undercutting a competitor to secure a project. This serves to 'force' contractors to invest in new technology, training and safety in order to gain a competitive advantage (*ibid.*)

SIPTU, the largest trade union in the construction sector, have also highlighted how the SEOs, in the different sub-sectors, effectively take wages out of the competition. This they argue serves to both maintain minimum employment standards for workers and prevents the 'undercutting' of the majority of decent employers. The ICTU view SEO's as key to protecting, and enhancing, the terms and conditions of employees in a particular sector and as such they remain strongly supportive of this collective bargaining extension mechanism. Indeed they and affiliated unions are keen to have them developed and implemented in other sectors of the economy.

Ibec have articulated their concern that this type of collective bargaining mechanism effectively undermines voluntarism given that it can be used to unilaterally impose a legally binding order on employers who were not involved in its formulation (Higgins, 2021) . At the same time their positive engagement with High Level Review Group is indicative of their commitment to reforming the current wage setting mechanisms to make the system more effective and flexible.

The Labour Court in its 2018 review of JLC's also noted the same tensions between what is perceived as the different interests of larger and smaller companies with regards to the operation of JLCs and EROs in the security and contract cleaning sectors respectively. The largest employer organisation in the security sector, the Irish Security Industry Association (ISIA), maintain that by setting a sectoral norm for remuneration and conditions, the ERO enables the industry to continue to attract and retain the right calibre of staff (Higgins, 2021e). The JLC/ERO along with the licencing regime operated by the Private Security Association and the increased investment in training are considered to be the three interrelated elements that have underpinned the upgrading and greater professionalisation of this sector over the last two decades.

*having set standards of pay through an ERO for security operatives, it allows the industry to attract the right calibre of people, justify the training levels required for licencing and not allow for standards to be depleted. (Irish Security Industry Association, cited in Labour Court 2018:46)*

It is worth noting that Justice McMenamin refers to the fact that one of the aims of the 2015 legislation is to prevent social dumping. Interestingly the security firm Manguard Plus have stated that EROs have reduced the practice of 'treating employee wages as if they were a product to be discounted in order to gain business' (Higgins, 2022c).

In contrast, the three security companies, who secured a High Court injunction against the application of the new ERO allege that it is designed to support the interests of the larger employers. This, they maintain, generates anti-competitive outcomes that reduce employment by encouraging clients to turn to cheaper technology-based solutions (Higgins, 2021). The ISIA however state that a combination of staff development, better standards and better quality service drives growth and generates more sustainable employment.

A number of employer submissions to the 2018 Labour Court review emphasised that justification for JLCs has been removed by the establishment of the Low Pay Commission, the introduction of a National Minimum Wage and the growing body of employment rights legislation. Duffy and Walsh (2011), in their review of wage setting mechanisms, stressed that it is not an accurate to say that the growing body of primary employment rights adequately covers the employment issues covered by EROs and REAs. These authors highlight that ERO's for example typically set down standard weekly working hours (based on industry norms) and provide for overtime rates, sick pay, pensions and higher skilled-based pay rates all matters that were not covered by employment rights legislation at that time. The Labour Court (2018) also concluded 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.

A number of employer organisations and individual enterprises contend that the EROs in security and contract cleaning deliver's greater certainty with regards to the planning and forecasting of costs (Labour Court, 2018). Conversely opponents of the EROs both in this sector, and in others where JLCs exist, argue that by providing for pay in excess of the national minimum wage, EROs have increased labour costs and undermined competition. The application of sectoral norms in relation to terms and conditions is also viewed as constraining individual flexibility and the ability to adjust costs to reflect changing business and market conditions. Interestingly a major employer in both the contract cleaning and security sectors indicates that sectoral collective bargaining is preferable to a series of employer by employer claims.

As noted above collective bargaining is considered to have contributed to the positive development of the security sector while in the contract cleaning sector the ICCA highlight how the JLC structure facilitates proactive and considered negotiations between the key stakeholders. In the retail grocery sector, however, the majority of employers and representative bodies argue that the JLC has failed to keep a pace with the major structural and product changes that have underpinned the emergence of a more complex, fragmented and dynamic sector. This has ensured that the JLC, in their opinion, is no longer 'fit for purpose'.

The Irish Hotel Federation labelled the JLC for the hotel sector an archaic system that should be abolished as it discourages employment creation. For the ICTU the same JLC is an important industrial relations infrastructure that contributes to the maintenance of fair and sustainable pay and conditions, protects migrant workers and addresses the casualisation of work.

The social partners also displayed divergent views on both the contribution of JLCs and what changes needed to be introduced. In their submission to the 2018 Labour Court JLC review the ICTU strongly defended the maintenance of all the existing JLC structures, aside from the amalgamation of the two catering ones, arguing that they remain key industrial relations instruments that have the capacity to;

- Deliver enhanced terms and conditions for employees, in sectors traditionally characterised by low pay, low union density and labour intensity;

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- Mitigate against the increased adoption of precarious work practices; and,

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- Promote harmonious industrial relations

Indeed the ICTU suggest that in the absence of such structures unions would be forced to adopt a more aggressive strategy to advance worker's terms and conditions on an employer by employer basis.

Ibec's submission to the aforementioned review indicated their continued support for the three JLCs –hairdressing, contract cleaning and security – that had continued to meet. They did however recommend that all the other JLCs be abolished immediately as they were no longer fit for purpose. Ibec in particular labelled the 'one size fits all' approach adopted by JLCs/EROs as inflexible and unsuitable to sectors characterised by increased diversity and dynamic change. Like many sectoral representative bodies Ibec were particularly concerned that the imposition of statutory minimum remuneration in excess of the national minimum wage created artificially high labour costs that undermined both competitiveness and employment creation.

The Government have continued to actively promote the statutory wage setting mechanisms as evidenced by their appeal of the High Court's ruling on the constitutionality of the SEO regime. The Government also recognise that this architecture has been impacted by various factors including the series of legal challenges and as such recognise the need for the High Level Group to review existing wage setting mechanisms and if possible propose any appropriate reforms.

While both the ICTU and Ibec were involved in the deliberations that led to the establishment of the new Childcare JLC, the Government initiated and drove this process. The ongoing challenges in this sector – the high cost of fees, relatively low wages for qualified staff, the growing costs of regulation and compliance and high staff turnover – many of which were amplified by the impact of Covid-19, created a momentum for a reconfiguration of the sector and demand for the state to play a more active role. The establishment of the JLC is considered to be part of a suite of measures that will support the development of a new model of childcare.

*More favourable wages and working conditions are necessary to attract and retain qualified staff. The Government is committed to supporting this through the JLC process and through major projects underway in my Department to develop a new funding model and new workforce development plan. (Minister O' Gorman, T.D. cited in Higgins 2021f).*

Significantly the Government clearly signaled that the provision of proposed additional core funding to the sector was conditional on the parties to the JLC agreeing an ERO to set legally binding minimum pay and conditions for workers in the sector (Higgins, 2022a). As indicated earlier, two new EROS for childcare workers were approved by the Minister for Business, Employment and Retail in September 2022, following a process that began almost two years previously.

One of the assumed benefits of the JLC system is its capacity to deliver benefits for both employers and employees and in announcing his intention to sign a new contract cleaning ERO in 2020, Minister Damien English T.D., stated that:

*they are a robust way of ensuring fair terms and conditions such as wage rates, sick pay etc. For employers, they offer flexibility to agree on work practices, pay and conditions which are custom made to their industry. (Minister Damian English T.D.)<sup>18</sup>*

As with the other policy areas securing a consensus on the reforms that should be introduced in this area will be difficult and challenging. The renewed focus on collective bargaining, the recognition in the wake of Covid-19 of the need to improve pay and conditions within essential sectors of the economy and the challenge of meeting the requirements of the AMWD, is serving to refocus attention on the potential of these pre-existing institutional arrangements. This reflects their capacity to generate constructive engagement, deliver real improvements in the terms and conditions of low paid employees and at the same time be tailored to meet the needs of employers in different sectors. Realising this potential will however require the fostering of a more robust shared understanding of their role and the adoption of a set of measures to enhance their effectiveness and flexibility to ensure that they are capable of meeting the needs of employers and employees in a modern and sustainable economy.

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<sup>18</sup> See Higgins 2020b

## 5. The EU's Adequate Minimum Wage Directive

### 5.1 The European Commission's Adequate Minimum Wage Directive

On the 28<sup>th</sup> October 2020, the European Commission, following a two-stage consultation process with the social partners, put forward to the two co-legislators – the Council of the EU and the European Parliament - its proposal for an Adequate Minimum Wage Directive.<sup>19</sup> This aim of this proposed Directive was to improve the adequacy and increase the coverage of minimum wages while also strengthening collective bargaining, as the main instrument to ensure fair wages and working conditions (European Parliament, 2022). This initiative marked the first occasion on which the European Commission has set out a proposal for coordinating national policies on minimum wages at the European level (Lübker and Schulten, 2021).

The Council of the EU agreed its position on the proposed Directive on the 6th December 2021 while the European Parliament adopted its negotiating mandate on the 25th November 2021. Interinstitutional negotiations concluded on the 6th June 2022 with the Council negotiators and the European Parliament reaching an agreement on a common position.<sup>20</sup> In September 2022 an overwhelming majority of the European Parliament subsequently voted in favour of adopting the EU's new minimum wage directive.<sup>21</sup> Finally on the 4th October 2022 EU ministers approved the final text of the directive on adequate minimum wages and member states will now have two years to transpose this directive into national law.<sup>22</sup> While accepting that one should always be careful using the word '*historic*' Muller and Schulten (2022) suggest that in the case of the adequate minimum wages directive this characterisation might actually be appropriate.

Although minimum wages exist in all EU member states (21 have statutory minimum wages and 6 provide minimum wage protection through collective agreements) a combination of insufficient adequacy and/or gaps in the coverage of minimum wage protection is contributing to increased labour market inequality and in work poverty (EU Commission, 2020a). The directive seeks to address this situation by establishing a framework that sets out EU regulations in the following three areas

1. Procedures to set up and update the adequacy of minimum wages

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2. The effective access to minimum wage protection for those workers entitled to minimum wage under national law; and

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3. The promotion of collective bargaining on wage setting.

<sup>19</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1968](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1968).

<sup>20</sup> Sinn Fein (2020) Giving Working Families a Break: A Manifesto for Change. [https://www.sinnfein.ie/files/2020/Giving\\_Workers\\_and\\_Families\\_a\\_Break\\_-\\_A\\_Manifesto\\_for\\_Change.pdf](https://www.sinnfein.ie/files/2020/Giving_Workers_and_Families_a_Break_-_A_Manifesto_for_Change.pdf).

<sup>21</sup> [505 members of the parliament voted in favour with only 92 votes against and 44 abstentions, see https://www.euractiv.com/section/economy-jobs/news/eu-parliament-approves-minimum-wage-directive/](https://www.euractiv.com/section/economy-jobs/news/eu-parliament-approves-minimum-wage-directive/)

<sup>22</sup> <https://www.euractiv.com/section/economy-jobs/news/eu-minimum-wage-directive-gets-final-stamp-of-approval/>

This Directive does not oblige Member States to introduce a statutory minimum wages nor does it prescribe a common minimum wage level. The setting of national minimum wages moreover remains a national competence. At the same time it aims to achieve its core objective of raising national minimum wages to a level sufficient to ensure a decent income for all workers through a series of proposals that are designed to advance more rigorous criteria for what constitutes an adequate minimum wage level and also strengthen the statutory and agreed institutions that determine minimum wages (Lübker and Schulten, 2021).

With regards to the **adequacy of statutory minimum wages**, Member states with statutory minimum wages are requested to put in place a procedural framework to set and update these minimum wages according to a set of clear criteria. Updates to the statutory minimum wage will take place at least every two years (or no later than every four years for countries which use an automatic indexation mechanism). As indicated above the directive does not prescribe a specific minimum wage level that member states have to reach. At the same time the regulations stipulate that the 'adequacy' should be regularly tested so that the minimum wage can be reconsidered if circumstances change, for example rising inflation. The Directive stipulates that member states should use indicative reference values to guide their assessment of the adequacy of minimum wages and in this context suggests that they may use the reference values of 60 per cent of the gross median wage or 50 per cent of the gross average wage.

Muller and Schulten (2022) contend that this particular provision is significant as it establishes 'de facto' a double decency threshold. Although this is not legally binding on Member States, these authors argues that it represents a strong normative benchmark for setting wages at the national level. Muller and Schulten also note that in practice, this threshold already guides minimum-wage setting in various member states.

- Germany anticipated the adoption of the directive with its decision to increase the statutory minimum wage €12 by October 2002, as this is approximately 60 per cent of the gross median wage.
- The Irish Government has signaled its intention to phase out the minimum wage by 2026 and replace it with a new living wage which will be set at 60 per cent of the median wage in any given year.<sup>23</sup>

The directive also seeks **to improve effective access to minimum wage protection**. In this context the text stipulates that member states will take measures to enhance workers effective access to statutory minimum wage protection. The proposed measures to this end include:

- controls by labour inspectorates
- easily accessible information on minimum wage protection; and
- developing the capability of enforcement authorities to take action against non-compliant employers.

These regulatory provisions in relation to statutory minimum wages do not apply to those Member States in which minimum wages are set by collective agreements only. Additionally as already noted such states are not obliged to introduce a statutory based minimum wage. As is discussed in more detail below the third strand of this new regulatory framework relates to **promoting and strengthening collective bargaining for wage setting**.

<sup>23</sup> <https://www.irishtimes.com/politics/2022/06/14/minimum-wage-to-be-phased-out-by-2026-for-new-living-wage/>

The Commission contend that this Directive has the potential to deliver a number of key social and economic benefits in terms of

- Reducing wage inequality at the lower end of the wage distribution

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- Reducing in work poverty

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- Stimulating productivity

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- Sustaining domestic demand

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- Strengthening the incentives to work

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- Reducing the gender pay gap, and

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- Protecting employers who pay decent wages

Commenting on the Directive, when it was first proposed in October 2020, the EU President Ursula von der Leyen stipulated that improving working and living conditions protects both workers and businesses who pay decent wages, and creates the basis for a fair, inclusive and resilient recovery.<sup>24</sup> It is estimated that approximately 25 million workers will see their salary increased by up to 20 per cent as a result of this Directive. As women are traditionally over-represented among minimum-wage earners, minimum wages at the double decency threshold is also expected to help to reduce the gender pay gap (Muller and Schulten, 2022).<sup>25</sup> The changing economic situation has reinforced the importance of this Directive especially for those on the minimum wage as they are the most affected by rising inflation.<sup>26</sup> Equally this new regulation is viewed as having the potential to ensure a decent standard of living for all workers.

*When people have to penny-pinch because of the energy crisis, this law is a message of hope. Minimum wages and collective wage setting are powerful tools that can be used to ensure that all workers earn salaries that allow for a decent standard of living. (Marian Jurečka, Deputy Prime Minister and Minister of Labour and Social Affairs of Czechia: 2022).<sup>27</sup>*

It is recognised that the expected economic impacts of this initiative will include increased labour costs, increased prices and to a lesser extent, lower profits (EU Commission 2020b). The impact on firms however will be mitigated by the boost to domestic demand and greater certainty over wage increases. The Commission argue the impacts on aggregate competitiveness will be small and the possible negative impact on employment will be minimal. The benefits of improved minimum wage protection for concerned workers will, they maintain, greatly outweigh the possible negative employment impact on the same workers. Furthermore, the adoption of this Directive is viewed as supporting a model of competition in the Single Market that is premised on high social standards, innovation and productivity improvements rather than a ‘race to the bottom’ in terms of pay and conditions.

A central theme of the Directive is the emphasis on the key institutional role that collective bargaining plays in ensuring adequate minimum wage protection for workers.

*The countries with high collective bargaining coverage tend to display a lower share of low-wage workers, higher minimum wages relative to the median wage, lower wage inequality and higher wages than the others (European Commission 2020a:3).*

<sup>24</sup> [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1968](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1968)

<sup>25</sup> The European Parliament’s Committee on Women’s Rights and Gender Equality(FEMN) have highlighted the key role of minimum wages in reducing inequality between men and women.

<sup>26</sup> <https://www.etui.org/news/final-adoption-directive-adequate-minimum-wages>

<sup>27</sup> <https://www.consilium.europa.eu/en/press/press-releases/2022/10/04/council-adopts-eu-law-on-adequate-minimum-wages/#:~:text=The%20Council%20of%20the%20EU%20today%20gave%20its%20final%20green,is%20a%20message%20of%20hope.>

The Commission notes that in Member states where minimum wage protection is provided exclusively by collective agreements, its adequacy and the share of workers covered, is directly determined by the features and functioning of the collective bargaining system. In Member states with a statutory minimum wage, collective bargaining also has an impact on minimum wage adequacy. By affecting general wage developments, collective bargaining ensures wages above the minimum statutory level and induces improvements in the latter.

In seeking to advance a process through which national minimum wages can be raised to a level sufficient to ensure a decent income for all workers, the Commission embraces the perspective that adequate minimum wages cannot be established by statutory means alone as it also requires a system of collective bargaining that is both institutionally comprehensive and has a high level of workforce coverage (Lübker and Schulten, 2021).

The Directive seeks to give effect to this institutional relationship through a series of provisions that are designed to strengthen national systems of collective bargaining and increase collective bargaining coverage. Firstly Member States, in consultation with the social partners, are required to take actions that promote the building and strengthening of the capacity of social partners to engage in collective bargaining on wage setting at sector or cross-industry level and encourage constructive, meaningful and informed negotiations on wages among social partners.

Secondly where collective bargaining coverage is below a threshold of 80 per cent of workers, Member states are required to provide for a framework of enabling conditions for collective bargaining and establish an action plan to promote collective bargaining coverage. Member state's action plans should set out a clear timeline and specific measures to progressively increase the rate of collective bargaining coverage. This action plan will be made public and notified to the European Commission. These plans are to be developed in co-operation with the social partners, regularly reviewed and updated at least every five years.

## 5.2 A New Approach to Employment Regulation

In line with Article 154 of the TFEU the Commission carried out a two-stage consultation of the social partners on possible EU action in the area of minimum wages prior to its publication of a draft proposal in October 2020. Trade unions generally agreed with the objectives and possible content of the initiative and favoured a Directive with strong binding minimum requirements. Employer organisations, while they displayed support for most of the objectives of the proposed action, strongly opposed the issuing of binding directive on minimum wages. Consequently, there was no agreement among the social partners to enter negotiations to conclude an agreement at Union level, as foreseen in Article 155 TFEU.

The AMWD represents the first occasion in which the European Commission has established regulatory provisions for coordinating national policies on minimum wages at European level. Critically this policy measure arguably represents a fundamental paradigm shift in the EU Commission's approach to employment regulation (Eustace, 2021; Lübker and Schulten, 2021; Prendergast, 2020). Previously the prevailing orthodoxy was that statutory minimum wages and collective bargaining were institutional impediments to economic and employment growth, and in the period post the Global Financial Crisis the Commission's proposals tended to focus on cutting minimum wages and weakening collective bargaining systems.

*Exactly ten years ago, the Directorate-General for Economic and Financial Affairs (DG ECFIN) recommended a decrease in statutory minimum wages and collective bargaining coverage and an overall reduction of trade unions' wage setting power as 'employment friendly reforms' (Muller and Schulten, 2022)*



The AMWD therefore marks a ‘sea-change’ in Commission’s philosophy as the focus is now on raising minimum wage levels and increasing collective coverage (Prendergast, 2020).<sup>28</sup> In other words adequate minimum wages and strong collective bargaining are no longer seen as part of the problem but rather as part of the solution (Muller and Schulten, 2022).

In setting out its original draft proposal in October 2020 the EU Commission argued that both income adequacy and collective bargaining coverage necessitated EU action in the form of a Directive rather than a non-binding recommendation, which some governments and the employer organisations would have preferred. The Commission’s view was that without a statutory requirement effective Member State action was unlikely due to perceptions about the potential impact on competitiveness and employment. While accepting that there will be some ‘economic costs’ the Commission contend that this proposal has the capacity to deliver a range of social and economic benefits and provide the foundation for a more sustainable and inclusive economic recovery.

In addition to the economic rationale, there is also a strong political imperative underpinning this ambitious initiative as there is strong consensus within the Commission on the need for an increased focus on Social Europe in order to address concerns regarding the lack of legitimacy and status of the European project. The European Pillar of Social Rights (EPSR) is a joint proclamation by the head of EU institutions, committing to implementing 20 principles in the area of social policy. This Directive seeks to give effect to workers’ right to fair wages that provide for a decent standard of living as enshrined in Principle 6 of the EPSR. Shortly after the publication of the initial draft proposal Joost Korte (DG, Employment and Social Affairs) commented that history will be judge of the Directive and that in ten years time ‘people will look back at this as a defining phase of Social Europe.’ (Prendergast, 2020a). Interestingly in May 2021 the EU leaders agreed to continue deepening the implementation of the European Pillar of Social Rights at both the EU and national levels.

### 5.3 A European Challenge to Ireland’s Voluntarist Regime?

As outlined earlier Ireland’s voluntarist industrial relations regime is characterised by comparatively limited statutory support or protection for collective bargaining. This in conjunction with structural changes in the economy and low trade union density has contributed to collective bargaining coverage falling to 34 per cent. This figure is one of the lowest of the EU14 and also places Ireland in the bottom half of the EU27 (see Figure 2). Consequently the EU proposals that where ‘coverage’ is less than 80 per cent Member states will be required:

- to take action to build and strengthen the capacity of social partners to engage in collective bargaining on wage setting, and
- 
- also provide a framework for enabling conditions for collective bargaining, including an action plan to promote collective bargaining,

has the potential to exert a significant impact on the overall industrial relations landscape in Ireland (Eustace, 2021; DETE, 2021; Stratis, 2020). TASC (2021) suggests that while Ireland is well positioned to comply with the minimum wage requirements of the AMWD, this is not the case with regards the collective bargaining proposals. Complying with these latter proposals would they suggest imply a significant expansion and/or reform of the private bargaining system or a new regulation designed to facilitate collective bargaining. Indeed the DETE (2021) record that it has been suggested that Commission’s measures would fundamentally alter our current industrial relations landscape through a harmonising approach to collective bargaining in the EU.

<sup>28</sup> As a recent roundtable discussion on the AMWD there was a universal consensus amongst participants that the Directive represents a sea change in the Commission, as wage moderation has usually been the approach in a time of crisis, most evident in the economic crisis of 10 years ago (Prendergast, 2020).

One experienced IR practitioner predicted that this Directive will be the issue that will dominate the deliberations of the High Level Group on collective bargaining and industrial relations.<sup>29</sup> Given its potential implications for the conduct of collective bargaining within Ireland, these EU proposals have generated quite divergent and strong opinions amongst Government, employers and trade unions.

### The Coalition Government:

As noted above the prevailing view within the coalition government is that the voluntarist approach to industrial relations is one that has ‘served us well for many years’. In this context the EU proposals calling for national action to strengthen collective bargaining institutions and substantially increase, over time, the proportion of workers covered by collective agreements was considered at the outset problematic given that it appears to challenge the prevailing voluntarist model of pay determination. There was certainly concern, when the draft Directive was first published, within government and the industrial development agencies that the proposed EU level ‘binding recommendations’ on these issues would be problematic for the many non-unionised multinationals who contribute significantly to both overall employment and tax revenue (Prendergast, 2021a).<sup>30</sup> Indeed the Ireland was one of eight Member States who issued a joint letter in early 2021 in response to the draft AMWD requesting that the proposed Directive be changed to a non-binding recommendation thus affording Member states a higher level of flexibility in how they respond to this guidance (Prendergast, 2021a).<sup>31</sup>

The DETE in its submission to the private hearing of The Dáil Joint Committee on Enterprise, Trade and Employment in December 2020 indicated that while the government fully supports the objective that workers must be paid a fair and adequate wage they would be seeking further clarification around the subsidiarity issues raised by the proposed regulation. This Committee consequently announced its intention to seek views on whether the proposed Directive ‘complies with the subsidiarity principle, including the legal basis and choice of instrument as outlined by the proposal (*ibid.*,).’ These various actions are indicative of the initial ‘degree of unease’ within government concerning the potential impact of the proposed binding recommendations on not only the industrial relations regime but also the state’s well established industrial policy with its strong emphasis on FDI, labour market flexibility and relatively limited labour market regulation. The fact however that the Commission proposal successfully navigated its way through the various stages of the EU’s decision making process over a two year period demonstrates the extent to which the Government and its officials gradually came on board with this proposal.

### Trade Unions:

The Irish trade union movement strongly endorsed from the outset the EU’s proposed AMWD given its emphasis on strengthening collective bargaining institutions, extending collective bargaining coverage and promoting income adequacy (Eustace, 2021; Fórsa, 2021; ICTU, 2021; SIPTU, 2021). Since 2019 the focus on the potential benefits of such an EU Directive has been the cornerstone of the ICTU’s collective bargaining policy (Sheehan, 2019). The ICTU (2021) have described the AMWD as one of the most important pieces of legislation on working and living conditions that the EU have issued in recent years and consider it part of the process of implementing the European Pillar of Social Rights. The use of a binding EU regulation is viewed by the unions as an appropriate mechanism for addressing the lack of effective statutory protection for collective bargaining within national legislation. It also resolves from their perspective the ‘*constitutional conundrum*’ whereby there is no obligation on an employer to engage in collective bargaining and/or recognise trade unions. In their response to the DETE’s public consultations exercise on the proposed Directive trade unions highlight the capacity of effective and quality collective bargaining to improve firm level productivity and innovation while also addressing issues such as low pay, wage inequality, the gender pay gap and precarious work (see also Eustace, 2021). As noted above the EU Commission articulated similar economic and social benefits in making the case for the AMWD. The OECD (2020) have also highlighted sectoral collective bargaining’s potential to reduce wage dispersion and address the gender pay gap.

Trade unions argue that strengthening income adequacy and collective bargaining constraints wage competition and forces companies to focus on innovation, productivity and quality rather than lowering employment standards (Eustace, 2021; SIPTU, 2021). The transposition of this Directive they contend can also provide the basis for a more robust and

<sup>29</sup> Ms. Caroline Jenkinson, former deputy chairman of the Labour Court, speaking at the IRN Conference 2021 (Prendergast, 2021b).

<sup>30</sup> In the early 1980s the IDA discarded its previous policy of encouraging MNC’s to negotiate pre entry ‘closed shop’ agreements with trade unions and move to a strategy of tacitly promoting Ireland’s lack of a legislative requirement for union recognition (Gunnigle, 1999; McGovern, 1989).

<sup>31</sup> The other seven Member States were Sweden, Denmark, Austria, Estonia, Netherlands, Hungary, Poland and Malta

enhanced form of social dialogue and indeed if there is to be a new social contract between citizens and that state based on the principle of equality, as envisioned in the Programme for Government 2020, then stronger collective bargaining rights has to be at its core given its capacity to reduce inequality (Fórsa, 2021).

### The Employers:

Although agreeing with the overall objectives of the Commission's initiative in terms of addressing poverty, making work pay and strengthening social dialogue, Ibec's submission to the DETE's public consultation exercise suggested that EU guidance in the form of a non-legally binding tool would have been a more appropriate way to progress this agenda while continuing to respect national competencies and social partner autonomy (Ibec, 2021). Ibec contended that the Directive constituted an unacceptable encroachment on the principle of subsidiarity and that it is essential that pay determination and collective bargaining remain a competence of Member States and the respective social partners.

Ibec were particularly concerned that the proposed requirements on collective bargaining, where coverage falls below 70 per cent would have a detrimental impact on Ireland's voluntarist industrial relations regime.<sup>32</sup> They suggested that the Commission's proposals may actually conflict with the Irish Constitution's protection of freedom of association in terms of the right of an employer not to engage in collective bargaining and/or recognise a trade union. Describing the Directive as a 'wolf in sheep's clothing' the employer consultancy Stratis claims that it has the potential to undermine 'the strong value proposition' that encourages multinational employers to locate in Ireland including the ability of employers to work with employees directly or via representative mechanisms as appropriate (Sheehan, 2021: Stratis 2021)

Ibec's submission highlighted that the potential additional regulation and costs associated with adhering to the Directive could, given the financial challenges already facing business as a result of Covid-19, undermine operational capacity and damage employment. Both Ibec and the CIPD suggest that this Directive will push up wage costs and exacerbate business and labour market difficulties while not assisting those it intends to benefit. The CIPD argue that while it is necessary to address in-work poverty, this is a complex issue that cannot be addressed by a directive or national legislation on minimum wages and/or collective bargaining (CIPD, 2021). Finally, Ibec were concerned that the unclear derogations and vague language used in the Directive will create huge complexity for transposition and a reliance on numerous court cases to clarify misinterpretations. For the various reasons outlined above Ibec in their submission called on the Department of Enterprise Trade and Employment to reject the Commission's proposals and instead push for a non-legally binding guidance tool.

### Civil Society

The National Women's Council of Ireland's submission to the DETE indicated that the development of this EU Directive has significant potential to address gender inequalities experienced by women workers (NWCI, 2021). The emphasis in the Directive on promoting social dialogue and collective bargaining also accords, they contend, with the National Strategy for Women and Girls which calls for dialogue between union and employer stakeholders on the gender pay gap.<sup>33</sup> Interestingly one of the 45 agreed priority recommendations of the Citizens Assembly on Gender Equality was to establish a legal right to collective bargaining to improve wages, working and conditions and rights in all sectors.<sup>34</sup>

<sup>32</sup> At the time of the Ibec submission the threshold for collective bargaining coverage was 70 per cent. The final figure of 80 per cent emerged in the context of the subsequent interinstitutional negotiations concerning the Directive.

<sup>33</sup> Citizens

<sup>34</sup> <https://www.citizensassembly.ie/en/news-publications/press-releases/recommendations-of-the-citizens-assembly-on-gender-equality.html>

## 5.4 A Shared EU Policy Challenge

The preceding discussion indicates that the EU's proposals on strengthening the institutions and processes of collective bargaining generated quite divergent responses from the Irish Government and the respective social partners. The fact that this is the first time the EU has sought to coordinate national action within this policy domain combined with Ireland's voluntarist tradition would suggest that this is not a surprising development. As already noted the 'right to bargain' and mandatory trade union recognition are long-standing contentious issues within the Irish industrial relations landscape. It is important to highlight that the Commissions publication of the draft AMWD in October 2020 actually generated similar debates at the European level which continued throughout the two years of intra and inter institutional negotiations around this Directive.

From the outset the European Trade Union Congress (ETUC) strongly endorsed the Commissions proposed Directive while arguing that it must also be strengthened to protect against unintended consequence and to ensure that it is capable of delivering both adequate statutory minimum wages and real increases in collective bargaining coverage.<sup>35</sup> Interestingly the Nordic and Austrian trade union confederations expressed their concerns that unwarranted state and EU intervention could threaten social partner autonomy and potentially undermine their existing robust and comprehensive collective bargaining institutions and processes. In welcoming the formal adoption of the Directive by the Council of the EU, the ETUC highlighted the need for member states to take action now to ensure that they have the laws and practices in place in time to meet the two-year deadline for the transposition of the Directive. Additionally, given the cost-of-living crisis they stressed the need for Governments to follow the example of Germany and increase minimum wages immediately.<sup>36</sup>

*There is absolutely no excuse for member states to wait two years to deliver decent pay, the cost-of-living crisis demands that governments help the lowest paid workers immediately...Governments should follow Germany in taking action now to increase statutory minimum wages and also promote collective bargaining as the best way to ensure genuinely fair pay. (Esther Lynch, ETUC Deputy General Secretary).<sup>37</sup>*

BusinessEurope, while not opposed to EU guidance on sensitive issues such as pay and collective bargaining, called the proposed binding Directive a 'recipe for disaster'.<sup>38</sup> It will they argued have a detrimental impact on economic and employment growth as EU businesses have no capacity to absorb the costs of this dangerous experiments on minimum wages at EU level. The also maintained that the proposed Directive goes against the word and spirit of the EU Treaty which protects national competences on pay and collective bargaining. Even as it became more evident that the Directive on minimum wages and collective bargaining would be adopted, BusinessEurope remained critical of it, while acknowledging that the Council of the EU had insisted throughout the inter-institutional negotiations on a better recognition and respect of national and social partners competences.

*By setting rules on minimum wages, the EU is entering uncharted waters and acting at the very limits of its competences. ...Public authorities must avoid politically motivated minimum wage increases and respect the autonomy of social partners when implementing this new Directive. (Markus J Beyrer, DG BusinessEurope, 16/06/22).<sup>39</sup>*

<sup>35</sup> <https://www.etuc.org/sites/default/files/page/file/2021-02/ETUC%20calls%20for%20improvements%20to%20the%20Directive%20on%20adequate%20minimum%20wages%20to%20achieve%20fair%20minimum%20wages%20and%20collective%20bargaining.pdf>

<sup>36</sup> <https://etuc.org/en/pressrelease/follow-germany-and-raise-minimum-wages-now>

<sup>37</sup> *Ibid.*,

<sup>38</sup> <https://www.buinessurope.eu/publications/proposed-eu-directive-minimum-wages-recipe-disaster>

<sup>39</sup> <https://www.buinessurope.eu/publications/eu-minimum-wage-rules-must-not-undermine-social-partners-competences>

The adoption of a European Directive that contains regulatory provisions designed to strengthen national systems of collective bargaining, increase collective bargaining coverage and support social partner capacity building is a significant development. It is accepted however that this will pose challenges to many Member States. As is evident from Figure 2, collective bargaining coverage is actually below the Commission's 80 per cent threshold in nineteen of the twenty-seven Member States. Ireland along with Greece have been identified as two states where 'remedial action' is particularly required given the current low levels of collective bargaining coverage (Lübker and Schulten, 2021). Similarly collective bargaining coverage is comparatively low in nine out of the ten CEE member states. Indeed in seven of the CEE Member States less than a quarter of the workforce is covered by a collective agreement.

In this context it is important to recognise that the AMWD has been designed as a response to declining collective bargaining coverage across the EU. The EU Commission (2021a) highlights that traditional collective bargaining structures have been eroded during the last decades, in part due to structural shifts in the economy towards less unionized sectors and to the decline in trade union membership related to the increase of atypical and new forms of work. Addressing the impacts of these systemic and structural changes in the economy will be a complex task. For example, compared to Ireland, Germany is normally viewed as having a more robust industrial relations regime and collective bargaining coverage is higher at 52 per cent. This figure confirms, however, that the trend towards declining collective bargaining coverage that began in the mid-1990s is now a continuing feature of the German employment relations landscape (Schulten, T. and the WSI-Tarifarchiv, 2021). Although trade unions have taken actions to address this situation, it is argued that the key responsibility for halting the erosion of the German collective bargaining system and consolidating and expanding collective bargaining coverage now rests with policymakers and with government (*ibid.*). In other words political action is required to raise the level of collective bargaining in Germany (Lübker and Schulten, 2021).

It was also indicated earlier that unions in a number of states with high levels of collective bargaining coverage – for example Austria, Denmark and Sweden – have raised concerns about the potential negative impact of the Commission's proposals on social partner autonomy and their robust and comprehensive collective bargaining institutions. Consequently this Directive is not just a policy conundrum for states with weaker industrial relations regimes and lower levels of bargaining coverage. Notwithstanding the different starting points in terms of collective bargaining coverage, there is a sense that meeting the challenges posed by the Commission's proposals are 'shared challenges' which are both economic and political in character.

Following the publication of the EU Commission's proposals there were suggestions that the subsequent negotiations regarding the text would be an opportunity to potentially 'water down' the provisions of the Directive to make them more palatable to those stakeholders who had raised objections. Arguably however this deliberative process has served to forge a more robust shared understanding of the need for this type of EU level initiative. As outlined above this Directive is viewed as putting in into practice principles that are enshrined in the European Pillar of Social Rights. The fact that in May 2021 EU leaders agreed to continue deepening the implementation of the European Pillar of Social Rights at EU and national levels provided a further boost to the momentum around the AMWD. Indeed rather than being watered down it is arguable that the provisions of the Directive in relation to collective bargaining were strengthened by the adoption of an 80 per cent threshold under which national action plans are required as opposed to 70 per cent which was in the original text. The deliberations around the Directive also served to reinforce the link between income adequacy and collective bargaining with very strong support emerging in particular for the benefits of effective and comprehensive sectoral bargaining systems. The resounding majority in favour of the AMWD in the EU parliaments vote on the issue – 505 in favour and 92 against – affirms the strong support that has built up around this significant initiative. It was also important that the EU level discussions on the AMWD were complemented and supported by ongoing national level policy dialogue and in this regard Ireland's establishment of a the peak level forum to review collective bargaining and industrial relations was a positive development.

The potential impact of the AMWD on collective bargaining processes and the wider industrial relations regime when combined with the diversity of opinion on its appropriateness suggests that this will be another challenging and thorny issue for the Irish government and social partners to grapple with. At the same time it has served to crystallise the debate around the relative merits of the current regime and the potential benefits of fostering more constructive and meaningful social dialogue and establishing a more comprehensive and robust system of collective bargaining. It also provides a new context for exploring and considering policy options in relation to the issues of trade union recognition, collective bargaining rights and the reform of statutory wage setting mechanisms. Equally how we progress these latter issues can also help shape how the state responds, in consultation with the social partners, to the requirements of this EU binding directive. Finally it is suggested that this Directive is to an extent bringing to the fore a richer debate about the need to reframe our approach to employment relations policy given its potential to generate a broader range of economic and social benefits.

Having considered the three main policy issues that are to be addressed in the context of the High Level Group's strategic review, the paper will now focus on what it considers to be a number of key environmental factors that are impinging on this process. It is argued that collectively these 'factors' reinforce the importance of grasping this opportunity to engage with the aforementioned industrial relations policy challenges. It is suggested that these environmental factors are also partly constraining (pushing) and partly incentivising (pulling) the relevant actors towards a recognition that forging new and agreed approaches on these 'thorny issues' has the potential to deliver a range of economic and social benefits (Figure 1).

## 6. A New Political Paradigm: Labour Market Fairness, Employee Rights and Collective Bargaining

### 6.1 The EU's New Approach to Employment Regulation

The current policy dialogue concerning the future development of the Irish industrial relations regime is also being shaped by an emerging political paradigm in which labour market fairness, improved employee rights and access to collective bargaining have moved centre stage, after several decades in which the prevailing political consensus was that these type of policy instruments were considered to be constraints on economic and employment growth. As was highlighted earlier the development of the proposed AMWD represents a fundamental paradigm shift in the EU Commission's approach to employment regulation. While there is a strong economic rationale for this development, this 'shift' has also been driven by the political considerations of EU leaders as they seek to give effect to the concept of Social Europe and address concerns regarding the legitimacy of the EU project. Writing just a few years before this change Doherty (2016) notes that the prevailing trend at the EU level was towards legislative and policy measures that reduced the influence of trade unions on labour market regulation, reduced the scope for collectively bargained labour standards and downgraded the role of social dialogue. The requirements of the AMWD in terms of Member States actively increasing collective bargaining coverage, enhancing the capacity of social partners and facilitating meaningful and constructive dialogue represents a clear break from the aforementioned trend.

### 6.2 The Fair Pay Agreement System - Sectoral Bargaining in New Zealand

The New Zealand Government have introduced their legislative proposals for a Fair Pay Agreement (FPA) system that is designed to establish a new system of sectoral collective bargaining.<sup>40</sup> The proposed FPA system will facilitate employers and unions within a sector negotiating minimum terms and conditions for all employees in that industry or occupation. The proposed FPA system includes support for the bargaining parties to help them navigate the bargaining process and reach an agreed outcome, as well as processes to ensure compliance. The New Zealand Government also announced financial supports for the new system including social partner capacity building, namely;

- \$250,000 per year for three years for the New Zealand Council of Trade Unions and Business NZ to support their role in coordinating Fair Pay Agreements, identifying bargaining parties and helping to raise awareness about Fair Pay Agreements and the bargaining process.

Under the FPA system, a union can apply to the New Zealand Ministry of Business, Innovation and Employment ('MBIE') to start the bargaining process for an FPA, provided they can demonstrate support from either 10 per cent or 1,000 employees (whichever is lower) in the proposed industry or occupation. The coverage of an FPA is to be delineated by the parties involved in the bargaining process. The union seeking to initiate FPA bargaining must define the industry or occupation that is proposed to be covered, and coverage issues can be the subject of negotiations between unions and employer representatives

<sup>40</sup> See <https://www.mbie.govt.nz/about/news/government-announces-fair-pay-agreement-system/>

Bargaining for a Fair Pay Agreement can also be initiated via a public interest test in an industry or occupation where employment issues exist for example low pay or limited bargaining power. The terms that must be included in a FPA include those pertaining to coverage, base wage rates, ordinary hours and overtime (Bomland, 2021).<sup>41</sup> There are also a number of issues that must be discussed as part of the negotiations process, which need not be included in the final agreement including leave entitlements and health and safety. The sectoral social parties also have the flexibility to include in their FPA, if they reach agreement, other terms that are related to employment.

The proposed FPA system will operate alongside the existing system of enterprise-level bargaining arrangements. Initially this new form of sectoral bargaining will apply only to employees, however it is planned to bring certain categories of independent contractors within its remit. The main elements of the proposed legislation are set out in Box B.

**Box B: The New Zealand Fair Pay Agreement System:**

- Bargaining for an FPA can only be initiated if either the representation test or the public interest test is satisfied. The representation test requires a demonstration of support from 10 per cent or 1000 employees (whichever is lower) in the nominated sector or occupation. Regarding the public interest test the MBIE must consider certain criteria such the prevalence of low wages of low bargaining coverage.
- The bargaining process will involve the trade union that initiated the FPA process along with other unions that choose to participate in the process.
- Employers will be represented by relevant representative employer organisations or organisation. In industries where there is an absence of an employer organisation and limited capacity to coordinate and bargain FPAs BusinessNZ will have a role in locating appropriate employer representative bodies. Where such bodies do not exist BusinessNZ will be the bargaining representative for employers.
- If an FPA is negotiated it is examined by the NZ Employment Relations Authority (ER Authority) before being put to vote by all employers and employees falling with the ambit of the FPA. A simple majority of those who vote on both the employer and employee sides is required for it to be ratified. If the first vote fails, bargaining resumes and any ensuring agreement is put to a second vote. If this vote fails, the ER Authority will by determination set the terms of the FPA
- Industrial action is not permitted during the FPA bargaining process
- If the negotiations fail to produce any agreement that can be put to a vote, either the union(s) or the employer organisation(s) may apply to the ER Authority to have the terms of the FPA set by determination.
- Once an FPA has been set by ratification or determination it will be given force by secondary legislation and will cover all employees in the particular sector or industry.
- The terms that must be included in a FPA include those pertaining to coverage, base wage rates, ordinary hours and overtime. There are also a number of issues that must be discussed as part of the negotiations process, which need not be included in the final agreement including leave entitlements and health and safety. The sectoral social parties also have the flexibility to include in their FPA, if they reach agreement, other terms that are related to employment.
- The proposed FPA system will operate alongside the existing system of enterprise-level bargaining arrangements. Initially this new form of sectoral bargaining will apply only to employees, however it is planned to bring certain categories of independent contractors within its remit

Source: Bomland, P. (2021)

<sup>41</sup> This section draws extensively on P. Bomland (2021) Sectoral Bargaining coming to New Zealand, available at <https://onlabor.org/sectoral-bargaining-is-coming-to-new-zealand/>



Bomland (2021) contends that the implementation of this new form of sectoral collective bargaining marks a significant development in the New Zealand labour law system. The same author also suggests that the New Zealand experience could provide valuable lessons for those in other jurisdictions who are advocating for a recalibration of the balance of power between employers and workers.

The New Zealand Government argue that this new sectoral bargaining system is required to address the sharp decline in collective bargaining coverage and the stagnation in wage growth. By establishing binding minimum employment terms and conditions across an industry or occupations the FPA system seeks to prevent employers cutting wages and conditions to secure competitive advantage. This will, the Government contend, force companies to compete on the basis of innovation and productivity.

*Fair Pay Agreements will help good employers by stopping the race to the bottom we've seen in various industries and encourage competition that isn't based on low wages but on better products, services and innovation. (Hon. Michael Wood)<sup>42</sup>*

The New Zealand Government also see the establishment of a comprehensive sectoral bargaining system as the necessary architecture for driving greater fairness in the labour market and ensuring all employees have access to improved pay and conditions. They maintain however that this is a balanced process as it is premised on negotiation between actors – employers and unions – who know their sector best and who have a mutual interest in supporting sustainable development through increased innovation, productivity and workforce training.

### 6.3 The Potential Return of Sectoral Bargaining in the UK ?

In the UK, the Deputy leader of the Labour Party has indicated that a Labour Government would, echoing the approach adopted in New Zealand, introduce a system of government-backed negotiations between unions and employers across an entire sector rather than firm-by-firm (Stewart, 2021). Starting with adult social care this type of sectoral bargaining would set minimum pay rates and basic conditions, which would then become a mandatory 'floor' across the sector. Frances O'Grady, secretary general of the TUC has labelled this policy commitment a 'game changer'.

*Many of the key workers who got us through this crisis – including our dedicated care staff – are on poverty wages and insecure contracts. Fair pay agreements would help end this injustice and be a game changer for millions of working families. (Frances O'Grady:2021)<sup>43</sup>*

In outlining its decision to establish the tripartite social partnership group, the Social Care Fair Work Forum, the Welsh Government indicates that employee voice and collective representation are not only substantive characteristics of fair work in their own right but also a process to help secure fairness in other areas (Welsh Government, 2021b). The establishment of the Forum is viewed as potentially providing an opportunity to design a new model of collective bargaining for this independent sector. It will also seek to identify measures that will increase the membership of representative organisations in this sector and secure employee voice.

Increasing collective bargaining coverage across Scotland has also been identified as a priority in the Scottish Government's Fair Work Action Plan and can be an indicator of the adoption of Fair Work First.<sup>44</sup> The treatment of employees has also come to the fore in debates around tackling the shortage of HGV drivers in the UK with the Conservative Chairman of the Transport Select Committee, Huw Merriman M.P. saying that this must be solved by improving working conditions, increasing their pay and attracting a more diverse workforce to the industry.<sup>45</sup>

<sup>42</sup> <https://www.beehive.govt.nz/release/fair-pay-agreements-improve-pay-and-conditions-essential-workers>

<sup>43</sup> <https://www.theguardian.com/politics/2021/sep/24/labour-would-empower-unions-to-drive-up-wages-says-angela-rayner>

<sup>44</sup> See <https://www.gov.scot/publications/fair-work-action-plan-annual-report/pages/10/>

<sup>45</sup> As a recent story from the Guardian reveals an individual's experience of undertaking the exact same job is significantly altered by the difference in working conditions for HGV drivers in the UK and France. See <https://www.theguardian.com/business/2021/sep/27/getting-into-europe-a-relief-hgv-driver-on-uk-crisis>.

## 6.4 A Pro-Union Presidency – Changing the Debate?

During both his presidential campaign and since being elected, U.S. President Joe Biden has articulated his desire to be seen as ‘the most pro-union president’ in history.

*In my White House, you’ll always be welcome. Labor will always be welcome. You know. You’ve heard me say many times: I intend to be the most pro-union President leading the most pro-union administration in American history. (U.S. President Joe Biden, 2021).*

In seeking to give effect to this pro-union rhetoric the Biden administration has sought to adopt an economic agenda premised on reviving collective bargaining after decades of decline, raising corporation tax, rewarding work and increasing federal minimum wages (Foroohar, 2021)

A centrepiece of this agenda is the proposed ‘Protecting the Right to Organise Act’ which has been described by some US commentators as ‘most significant enhancement of labor rights since the New Deal’ (Sheehan, 2021d). This legislation would by amending existing legislation provide enhanced protection for trade union activists seeking to organise and engage in collective bargaining. This initiative has generated strong opposition from employer representative groups. The National Retail Federation labelled it ‘the worst bill in Congress’, while the US Chamber of Commerce said that it would undermine workers’ rights, generate labour disputes, disrupt the economy and force individual employees to pay union dues regardless of their wishes (Gonyea, 2021). Although this legislation was passed in the Congress Republican opposition has ensured that it has failed to be even moved in the Senate and there is a general consensus that it is unlikely to be ever be passed into law.

There have also been other notable ‘legislative’ setbacks to the Biden administration’s pro-union agenda. The ‘Build back Better’ plan, which also failed to pass the Senate included billions of dollars of funding for the Department of Labor, the Equal Employment Opportunity Commission and the National Labour Relations Board. Similarly Biden was unable to persuade Congress to increase the Federal Minimum Wage across the country from \$7.25 to \$15 an hour as part of the American Rescue Plan (Garcia-Hodges, 2022).

Significantly despite this lack of legislative progress, particularly on the landmark ‘Right to Organise Act’, labour experts and trade union leaders contend that the Biden administration’s strategy of unilateral executive actions and other measures have benefited organised labour more than previously thought possible (Mueller, 2022).

Firstly the President has used his executive powers to issue a range of union-friendly executive orders. Following the aforementioned legislative failure on the Federal Minimum Wage, he signed an executive order directing all government agencies to require \$15 an hour wage payments in all contract solicitations starting in January 2022 (Politi, 2021). This move was viewed as part of his overall campaign to increase pressure on businesses to offer higher wages to employees

In February 2022, the Task Force on Worker Organising and Empowerment, which was also established by a presidential executive order, published its report containing nearly seventy recommendations to promote worker organising and collective bargaining for federal employees, and for workers employed by public and private sector employers.<sup>46</sup>

A key premise of this Task Force and indeed the overall approach of the administration is that the 1935 National Labor Relations Act, which protects federal labour rights, actually stipulates that Governments should encourage trade unions and collective bargaining (Biden, 2021) an aspect of the legislation that has not been fully explored or used by any other previous administration (Scheiber, 2022). In this context for example the President has committing to extending organising and collective bargaining rights to all state and local government employees. He has also stipulated that it is government’s job to remove barriers to workers organising (Biden 2021)

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<sup>46</sup> See <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/07/white-house-task-force-on-worker-organizing-and-empowerment-report/>

As was discussed in section 5, the EU Commission's commitment to promoting collective bargaining coverage is premised on its role in addressing labour market inequality and securing adequate incomes for workers. Interestingly the aforementioned Taskforce report contends that increased economic inequality, growing pay gaps for women and workers of colour and the declining voice of working-class Americans in the nation's politics are caused in part by the declining percentage of workers represented by unions (White House Taskforce on Worker Organising and Empowerment, 2022). As President Biden himself has stated 'when unions win, workers across the board win...families win, community wins, America wins.'<sup>47</sup> The President also used an executive order to establish a requirement for wage agreements between labour unions and contractors on federal construction projects worth more than \$35m (Scheiber, 2022).

A key part of President Biden's approach has been to include piecemeal pro-union measures and language into parts of seemingly unrelated legislation. According to Steve Rosenthal, a former political director of the AFL-CIO<sup>48</sup> and senior official in the Clinton administration 'if you read the administration's policy proposals – everything from climate change to you name it – the words 'labor' and 'unions' is in there as much as it is in their labor law reform.' (Mueller, 2022).

For example, the bipartisan infrastructure bill, includes provisions that requires contractors to pay prevailing wages - typically set by unions -and also expands registered apprenticeships which often involve partnership with unions. Similarly provisions in the house passed version of the China Competitiveness legislation cements union participation on key issues like workforce development while organisations receiving federal funding for broadband investment must comply with labour laws and have in place worker selected safety and health committees. Finally the inclusion of 'union-backed' language in the American Rescue Plan was viewed as being key to the bolstering of approximately 200 multi-employer pension plans and securing the pensions of thousands of workers, many of whom were union members.

Finally the President has taken action to increase the capacity, authority and role of key institutions including the Department of Labor, the National Labor Relations Board and the Occupational Safety and Health Administration. As part of this the President has reversed measures introduced by his predecessor and also appointed a number of 'union-friendly' officials to leadership roles within these institutions.

The collective impact of these actions has been to effectively move the needle on the issue of trade unions more than was expected and according to Steve Rosenthal, you now have a situation whereby "after decades of Democratic Presidents who didn't say the 'u' word, Biden has effectively kicked the door down (Mueller, 2022).

Notwithstanding the strong political and business opposition generated by a number of Biden's legislative proposals, the very fact that a US President has so strongly championed a pro-union and worker agenda, is further evidence of, and adds momentum to, the paradigm shift internationally on the issues of labour market fairness, employee rights and collective bargaining. For a number of years the political dialogue in Ireland on a whole range of issues including employment relations, was often framed as a choice between Boston or Berlin. It could be a case that the 'distance' between these political philosophies on certain core issues is becoming less stark. Significantly both the Tánaiste (see section 6.5) and the CEO of Ibec (see section 11) have both acknowledged the impact of the Biden administration's policies on the debate internationally around income adequacy, the right to organise and access to collective bargaining.

<sup>47</sup> <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/08/remarks-by-president-biden-in-honor-of-labor-unions/>

<sup>48</sup> The American Federation of Labor and Congress of Industrial Organizations

## 6.5 The Government's New Vision for the Labour Market

This new political focus on labour market fairness, employee rights and collective bargaining, allied to the experience and impact of Covid-19, is also exerting a discernible impact on the policy dialogue in Ireland around the nature and role of the employment relations regime.

In an important speech to business leaders in September 2021, the Tánaiste Leo Varadkar highlighted how the crisis had demonstrated the benefits of working together in the pursuit of common goals and that this need not be an exception.<sup>49</sup> He noted that it is essential to keep a close focus on competitiveness, personal and business taxation, while building better, quality jobs and that the Department of Enterprise, Trade and Employment was committed to working with Ibec, worker representatives and others to implement necessary reforms. Significantly, in highlighting the focus within the Economic Recovery Plan on restoring public finances through growth not retrenchment and job creation the Tánaiste also articulated a strong vision of a new economy that resonates with new political paradigm discussed in this section..

*it's also about building a new economy that is more inclusive, more secure. A just society - the move to a living wage, statutory sick pay, occupational pensions for all workers, flexibility in the workplace, remote working and more opportunities for promotion, training, education, research, and gender equality. (Tánaiste Leo Varadkar, T.D.).<sup>50</sup>*

As noted below the Government have in the Programme for Government 2020 identified the need to focus on creating quality jobs. The same document also states that Ireland requires a new social contract between citizens and the State. In this speech the Minister outlines a number of key labour market measures that will seek to give effect to these strategic policy goals in terms of commitments in relation to the introduction of statutory sick pay; moving towards a Living Wage; legislation to support flexible (remote) working; the introduction of occupational pensions for all workers premised on an auto-enrolment system and a renewed focus on collective bargaining in the context of High Level Group's work.

In relation to the last of these issues, the Tánaiste reaffirms how collective bargaining has moved more centre stage within international and national political discourse.

*How employers and their employees engage on matters of mutual interest is now becoming a more pronounced societal and economic necessity. We see this under the Biden administration and, closer to home in the EU with the introduction of the EU's draft Directive on the Minimum Wage. This Directive, while still under negotiation, seeks to agree an ambitious target for collective bargaining across Member States. (Tánaiste Leo Varadkar, T.D.)<sup>51</sup>*

In this address the Tánaiste clearly distinguishes between collective bargaining and mandatory union membership or statutory trade union recognition. He does however highlight the capacity of collective bargaining on matters of mutual interest to deliver mutual economic and social benefits in terms of ;

- Delivering fair pay

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- Promoting worker well-being

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- Supporting business resilience

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- Improving living and working conditions and

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- Contributing to the development of a highly competitive social market economy.

<sup>49</sup> See Speech by Tánaiste Leo Varadkar TD at the Ibec President's Dinner 23/09/21. <https://enterprise.gov.ie/en/News-And-Events/Speeches/20210923.html>.

<sup>50</sup> Ibid.,

<sup>51</sup> Ibid.,

These benefits are interrelated as it is suggested that fair pay to ensure a properly skilled and flexible workforce is a vital element of ensuring an individual business's competitiveness and survival. The Government also accept that deliberations on this issue will be challenging and progressing it will require leadership from the social partners. In the same context the Tánaiste calls on business leader to recognise the economic, business and societal benefits of engaging with collective bargaining and to rally behind Ibec as they undertake intensive discussions with the Government and the trade unions in the context of the High Level Group's review.

This keynote address confirms how the political landscape concerning employment relations has been arguably transformed. It is clearly recognised that this is a complex issue and that progressing it will require strong leadership, pragmatism and intensive deliberations. At the same the strong focus on the potential economic and social benefits of a new approach to collective bargaining suggests that the Government is keen to ensure that the high level review will lead to actions that will create a more robust and effective system capable of delivering said benefits. While it would be a stretch to say that the Government is seeking to impose a solution on the social partners, they do seem to be actively steering them towards engaging with these issues and certainly the state is an active player in these deliberations. It could be said that this review is taking place to an extent in the shadow of the state.

Although it was a more bounded and less fraught project it was the state who were the driving force behind the establishment of new statutory wage setting mechanism in the childcare sector. This is a clear example of their active support for measures that will protect and promote collective bargaining. As noted earlier collective bargaining is not only important in its own right but also as an enabler of progress on other fairness issues (Welsh Government, 2021). In this regard constructive social partner engagement and a more robust system of collective bargaining can make a pivotal contribution to the achievement of the governments ambitious vision of a fairer and more inclusive economy. Finally there would appear to be evidence that the state is seeking to transition from an industrial relations agenda that was strongly focused on orderly dispute resolution with only tangential links to other policy areas towards a more developmental approach where employment relations is viewed as a more central element of the policy mix given its capacity to actively contribute to enterprise policy, labour market policy and social policy. In particular, collective bargaining is seen as pivotal to increasing innovation, raising productivity and ensuring a more inclusive and fair labour market where work is adequately rewarded and individuals experience 'decent' terms and conditions of employment.

## 7. Social Partnership: Pragmatism and Problem-solving deliberation

The capacity, and indeed willingness of the social partners ICTU and Ibec, to forge a shared understanding and reach a negotiated compromise that is acceptable to both constituencies will be critical to the outcomes of the 'industrial relations review process. This is especially the case in relation to the resolving the right the bargain conundrum, reforming the statutory wage-setting provisions and engaging with the policy requirements of the EU's proposed AMWD.

The strong tradition of social partnership and social dialogue is a positive in this regard particularly as the Irish model has been characterised by a commitment to engaging in pragmatic problem-solving deliberation (O'Donnell *et al.*, 2011; O'Donnell and Thomas, 2002). This characteristic has in the past facilitated the development of pragmatic but innovative responses to various 'knotty' public policy challenges that have often combined voluntary and statutory provisions. Although the utility of the 2015 'right to bargain' legislation is now questionable it is worth noting that the different legislative measures introduced over the period 2001-2015 to address this issue were premised on a negotiated compromise between ICTU and Ibec and were generally welcomed at the outset by both parties as positive developments.

A feature of the swift and effective response to the economic impacts of the Covid-19 has been the (re)emergence of a more active and meaningful form of tripartite social dialogue (Thomas, 2020). After the collapse of the social partnership system of centralised agreements, in the wake of the global financial crisis, both politicians and policy makers sought to distance themselves from this type of formalised and structured engagement with social partner organisations.

Positive working relations did continue as evidenced by the negotiation, in difficult circumstances, of successive public sector stability agreements, the design of a private sector pay protocol, the establishment of the Labour Employer Economic Forum (LEEF), the ongoing work of the NESC and regular interaction on Brexit. At the same time the call from both ICTU and Ibec, pre the Covid-19 crisis, for the establishment of a more meaningful form of social dialogue around strategic policy concerns met with a muted response from the Government (Sheehan, 2020).

This situation changed however with the onset of the Covid-19 crisis. This global pandemic and the comprehensive emergency measures introduced to suppress its transmission, both nationally and internationally, generated a severe economic shock that was unprecedented in both the size and speed of its propagation (Central Bank of Ireland, 2020). Importantly from the outset both the ICTU and Ibec were directly involved with the Government in designing a series of labour market measures that were designed to mitigate the economic and social impacts of the pandemic in particular the employment protection measures – the Temporary Wage Subsidy Scheme (TWSS) and its successor the Employment Wage Subsidy Scheme (EWSS) - and the Covid-19 illness benefit scheme (EU Commission, 2021).

*Using the LEEF (Labour-Employer Economic Forum) as the main vehicle, unions, employers and Government quickly and effectively tackled huge issues like maintaining incomes and employment through State supports, and collectively agreeing an effective approach to workplace health and safety during a pandemic. (Danny McCoy, 2020).<sup>52</sup>*

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<sup>52</sup> <https://www.ibec.ie/connect-and-learn/insights/insights/2020/04/17/ceo-update-our-new-campaign-latest-political-engagement-and-workplace-wellbeing-day>

The Commission's Employment and Social Development in Europe (ESDE) Report 2021, identifies Ireland as one of ten Member States in which the level of involvement of the social partners in the design and management of short-time working and temporary employment schemes was high. When the TWSS was first introduced the social partners played a key role in championing the uptake of this remarkable level of state intervention in the labour market. They also worked closely with policy makers in revising the scheme to make it more effective in the light of emerging information regarding how it was working on the ground including inconsistencies in its coverage (Thomas, 2020). The social partners also worked closely with the relevant departments in designing and implementing the Return to Work Safely Protocol.

Consequently the LEEF, whose effectiveness and role has been queried by both ICTU and Ibec pre the crisis, has transitioned into a key arena for tripartite policy concertation and dialogue (Higgins, 2020). The Government has sought to build on its important contribution during the crisis by formally committing to strengthening the role of this particular tripartite institution. This is to be achieved by affording a stronger role to a series of sub-groups dealing with issues such as Housing, Pensions, and Childcare, as well as stepping up the level of discussions generally with Ibec and the ICTU on relevant economic and employment issues of mutual interest (Sheehan, 2022). The social partners involvement in the policy discussions that underpinned the introduction of statutory sick pay scheme in 2022 is indicative of the enhanced role afforded to LEEF on labour market issues,

The initiation of the high level review of the industrial relations regime and the fact that is taking place under the auspices of the LEEF is a further indication of the continuation of this more intensive and structured social partner engagement on strategic policy issues. Both the ICTU and Ibec have highlighted meaningful social dialogue's capacity to tackle strategic economic and social challenges facing the state. The issues being explored in the context of the industrial relations review are complex and challenging and reaching a robust shared understanding will not be easy. At the same time, the strong tradition of pragmatic problem solving deliberation allied with the realisation of the importance of grasping this opportunity to collectively shape a system that is fit for purpose and delivers for all stakeholders could serve to constrain them towards a consensus position. This is particularly the case if there is a sense that the alternative is to have policy solutions imposed on them for example with regards meeting the requirements of the EU's Adequate Minimum Wage Directive. The social partners moreover will be acutely aware of the aforementioned political signals regarding the need to demonstrate progress on these issues.

## 8. A European Solution to an Irish Problem ?

As was noted earlier in sections 5.4 and 5.5 much of the initial opposition to the Commission's proposal for an Adequate Minimum Wage Directive centred on the view that it did not comply with the principle of subsidiarity as enshrined in the TFEU. Importantly on March 9<sup>th</sup> 2021, the EU Councils Legal Service delivered its opinion on the AMWD confirming that it was possible and that the proposed Directive is drafted on the correct legal basis i.e. the protection of working conditions (Article 153 (1)(b) TFEU in conjunction with Article 153(2) TFEU).<sup>53</sup> In response the ETUC stated that this 'opinion' provides the basis for immediately progressing the Directive as doubts regarding its legality have now been addressed.<sup>54</sup> The fact that the two co-legislators - the Council of the EU and the European Parliament-were able to agree a common position on the Directive and then individually approve the final text clearly demonstrates that the Directive as it was originally envisaged clearly accords with EU law.

As was discussed in Section 3.4 there is a legal view that there exists a constitutional obstacle to the introduction of effective legislation to guarantee the right to engage in collective bargaining and/or provide for mandatory trade union recognition. In their submission on the AMWD Ibec argue that the EU proposals regarding strengthening collective bargaining may actually conflict with the Irish constitution's protection of the right of an employer not to engage in collective bargaining or recognise a trade union. It has been highlighted, however, that given the doctrine of the supremacy of EU law, the transposition of an EU directive that established a right to bargain into domestic law would be immune from the type of constitutional challenge that has long been considered inevitable were the State to pass a law that would make collective bargaining mandatory on employers (Dobbins *et al.*, 2020).<sup>55</sup> Interestingly both Caroline Jenkinson (former deputy chair of the Labour Court) and Kevin Duffy (former Chair of the Labour Court) have previously argued that an EU Directive on this issue would represent a way around the perceived constitutional obstacle to a right to bargain (see Prendergast 2021; Sheehan, 2019a ).

Although the AMWD does not guarantee either trade union recognition or a right to bargain its requirements in relation to strengthening collective bargaining institutions and extending coverage would appear to represent a legislative 'push' towards a more robust framework for collective bargaining. In this context, we may be moving towards the emergence of a possible 'European solution to an Irish problem'.

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<sup>53</sup> <https://www.etuc.org/en/document/opinion-council-legal-service-directive-adequate-minimum-wages-eu-better-late-never>

<sup>54</sup> Ibid.,

<sup>55</sup> Patricia King (General Secretary, ICTU) makes the same point in explaining ICTU's focus on an EU Directive as the cornerstone of their collective bargaining strategy (Sheehan, 2019b).



## 9. Covid-19: Valuing and Rewarding Essential Workers:

### 9.1 Recognising Essential Work

A significant outcome of the Covid-19 crisis is the extent to which it has revealed the true value to society of many lower-income, higher-risk jobs in retail, hospitality, healthcare, social care, public transport and other services (Fitzgerald, 2020). Individuals undertaking these jobs have been 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 pandemic has served to reaffirm the key foundational role that these 'essential' jobs and the 'reliance systems' they constitute, play in enabling a properly functioning economy and society (The Foundational Economy Collective, 2020).

Critically NESCC Secretariat research (see Fitzgerald, 2020) has demonstrated how Covid-19 has shone a light on the terms and conditions of many of these essential jobs in terms of the incidence of low pay; inadequate hours; lack of employee voice and representation; minimal employee benefits; poor pension coverage and contractual insecurity. The nature of these jobs also ensured that during the pandemic they were the ones in which the contact-intensity of the job/risk of infection was higher and ability to work remotely (and safely) was lower. In other words, it has become evident that the societal recognition of the essential nature of many of these jobs is not necessarily reflected in the terms and conditions and everyday work experience of the individuals undertaking these roles. The crisis has arguably created a recognition of the need to reappraise what constitutes good jobs and how we value and indeed reward different types of work and roles (Fitzgerald, 2020). Importantly employee voice and access to collective bargaining outcomes is increasingly being identified as part of the approach to improving the terms and conditions of workers undertaking socially and economically valuable work.

The Minister for Business, Employment and Retail for example has stipulated that Joint Labour Committees are a robust way of ensuring fair terms and conditions such as wage rates and sick pay etc. and in announcing the new ERO for the contract-cleaning sector specifically referenced the 'crucial' work undertaken by said employees during the pandemic.

*I'd like to recognise also the work performed by those working in the contract cleaning sector. The work has become even more crucial since the arrival of Covid-19 and often those providing contract cleaning services have found themselves on the front line of our efforts to suppress the virus. (Minister Damien English T.D.)<sup>56</sup>*

The ISIA, who have traditionally been strong advocates of the benefits of the JLC/ERO system for their sector, have highlighted that the High Court injunction against the ERO was delaying justifiable pay increases to the very workers that had continued to provide a vital service for the wider society throughout the pandemic.

*Until this case is heard, the statutory minimum rates of pay for the industry remain unchanged. This is not an acceptable position for the employees of an industry who support the safety and security of the public, critical infrastructure, and both public and private sector organisations across the state. The security officers waiting for this increase are the people who ensured our safety and security and worked through the COVID 19 pandemic while most of us stayed at home.<sup>57</sup>*

<sup>56</sup> [https://merrionstreet.ie/en/news-room/releases/minister\\_english\\_gives\\_notice\\_to\\_sign\\_order\\_to\\_increase\\_pay\\_for\\_contract\\_cleaning\\_services.html](https://merrionstreet.ie/en/news-room/releases/minister_english_gives_notice_to_sign_order_to_increase_pay_for_contract_cleaning_services.html)

<sup>57</sup> ISIA cited in Higgins, C. (2021f) 'Security employers strong backing for sectoral pay system', Industrial Relations News, No.32.

Similarly, SIPTU have stated that they are ‘appalled’ at the delay, caused by legal action, in affording pay increases for these particular frontline workers (Higgins, 2021f).

Although the New Zealand government’s commitment to a new model of sectoral collective bargaining pre-dated the Covid-19 crisis (Government of New Zealand, 2019) in announcing the design of the new Fair Pay Agreement system, Minister Michael Wood stressed that this was about investing in people and in particular improving the pay and conditions of essential workers who played such a key role during the pandemic.

*For too long New Zealanders working in critical roles like cleaners, supermarket workers, and bus drivers whose work was essential to keep our country going during the pandemic, have been undervalued by our workplace relations system. Fair Pay Agreements are about turning that around and ensuring that working kiwis get a fair go again. (Hon. Michael Wood, Minister for Transport and Minister of Workplace Relations and Safety 07/05/21).<sup>58</sup>*

The manner in which the Covid-19 experience has changed society’s perceptions of the role and value of essential workers across the economy has also been highlighted by the Biden administration in the USA. The crisis moreover, it is argued, has reinforced the case for ensuring dignity at work, enhancing employee and union rights and delivering better pay for workers (Biden, 2021).

It is recognised that the pandemic and the public health measures introduced to contain the virus has had a disproportionate labour market impact on young people, low-skilled workers, sectors with a higher share of low wage workers, those in non-standard forms of employment and the self-employed (EU Commission, 2021a; 2021b). The AMWD is very much situated in this context as the Commission contend that ensuring workers in the EU have access to both employment opportunities and adequate minimum wages is essential to support a sustainable and inclusive economic recovery (EU Commission, 2022).

## 9.2 The pay and conditions of employees in the care sector – A Public Health Issue?

The primacy afforded to public health policy in the context of the pandemic can also potentially lead to positive changes in the terms and conditions of front-line employees. In Sweden, the municipal authorities and the trade unions –with the support of central Government - agreed to permanently hire up to 10,000 nursing assistants and care workers to address gaps in elder care that were exposed by coronavirus outbreak.<sup>59</sup>

This decision was premised on the view, shared by the Health Minister, that the high incidence of mortality among elderly residents in nursing homes was linked to staff working conditions. In addition to concerns about the lack of PPE, the trade union Kommunal reported that forty percent of the staff in nursing homes in Stockholm – the epicentre of the Swedish epidemic – were unskilled workers employed on short-term contracts with no income or employment security. An additional 23 per cent of staff were temporary employees. This created a context in which staff could not afford not to go to work even if sick, thus contributing to the spread of the virus amongst vulnerable cohorts of the population. Following the Government’s establishment of a 208m euros fund to allow care workers to receive paid on-the-job training, Kommunal and the municipalities negotiated a deal whereby the newly trained staff would be offered permanent employment contracts and enhanced terms and conditions. As was noted above both the Welsh and Scottish Governments have established initiatives that are looking at how to improve pay and conditions and career pathways within the social care sector. In Ireland too the experience of the pandemic has generated a growing debate about the nature and funding of elder care policy and it will be interesting to see if similar issues relating to pay, terms and conditions, professional development and collective representation are part of this evolving policy dialogue.

<sup>58</sup> <https://www.beehive.govt.nz/release/fair-pay-agreements-improve-pay-and-conditions-essential-workers>

<sup>59</sup> See <https://www.thelocal.se/20200513/sweden-pledges-to-give-up-to-10000-care-workers-permanent-jobs/>

### 9.3 A Good Jobs Economy

In the Programme for Government there is a clear articulation of the need for a concerted policy focus on increasing the number of quality and sustainable jobs in the labour market as part of the updating of the Future Jobs policy framework in support of the national economic plan.

*Covid-19 has highlighted the need to make a deliberate policy shift to increase both quality jobs that will allow for better living standards and sustainable jobs, which will be less vulnerable to loss. (Government of Ireland 2020:19)*

As is was discussed in section 7 the Government has recently signalled their commitment to a range of policy measures that if introduced would improve the terms and conditions of workers across the economy. This ‘deliberate’ policy shift is indicative of a growing concern, nationally and internationally, of the need to address fragmentation and inequality in the labour market.

We’re living in a world now where the problem is that for a number of trends—to do with technological changes and how globalised the world market is—we are in a chronic state of shortage of good jobs (Rodrik, 2021).

This has served to focus attention on the idea of a ‘good jobs’ economy, given the potential positive economic, social and political externalities associated with good or quality jobs (Cazes *et al.*, 2015; Cohen, 2020; Rodrik & Sabel, 2019; Wilson, 2018).<sup>60</sup> From an economic perspective, good jobs are associated with higher levels of productivity, performance and innovation, which are viewed as drivers of sustainable economic growth. For individuals and society, a good-jobs economy is seen as a way of improving standards of living, reducing inequality and poverty, and improving personal well-being. Alternatively, ‘bad jobs’ are associated with high levels of labour turnover, slower innovation, lower productivity and additional managerial costs. There are also significant negative impacts on workers in terms of increased levels of employment and income insecurity and growing inequality. There has also been a growing recognition of the association between concentrated economic and social deprivation and the rise of political extremism, or what one author referred to as the ‘revenge of places that did not matter’ (Rodríguez-Pose, 2017).

Although there is broad consensus as to positive externalities associated with good job there is no agreed definition of what this means in practice though a number of different frameworks for measuring job quality have been developed (Wilson, 2018). This can serve to create uncertainty as to the suite of measures and actions that are required in order to improve job quality. Cohen (2020) states that improving the nature and design of work will not happen by chance, as it will necessitate a sustained, coordinated and collaborative approach.

*... making it different will require a very deliberative public-private focus on creating ‘good jobs’ in part by focusing on how to shape technologies as human amplifiers, in part by thinking about how good jobs fit into the larger world of education, training, consumption, finance, firm organisation, and worker representation (Cohen, 2020:4).*

This approach rejects technological determinist assumptions regarding the quantity and quality of work, highlighting the pivotal role of political and organisational decisions and actions. It also suggests that designing good jobs requires an active state and a coordinated set of public policies. There is scope for example to align labour market, industrial, and technology policy to the goal of supplying ‘good jobs’ (Rodrik, 2020). This paper suggests that there is now a recognition and indeed opportunity to develop employment relations policies that can be part of this ‘alignment’ in support of a good jobs economy.

Rodrik and Sabel (2019) refer to the good-jobs economy as a ‘slippery concept’ that will have highly contextualised features. These authors emphasise the need to mobilise networks of public and private coalitions, underpinned by a commitment to intensive interaction, learning and review and problem-solving deliberation based on emerging experience and knowledge. The different competitive pressures and labour-market contexts associated with different sectors suggest there is merit in the view that supporting good jobs will require the co-production of comprehensive and customised sectoral strategies (Osterman, 2019).

<sup>60</sup> In addition to good and quality jobs other terms that appear in in both the literature and policy practice, are fair work, good work and decent jobs.

A key requirement of the AMWD is to promote constructive and meaningful dialogue on wages between the social partners. The promotion of sectoral dialogue provides an opportunity to support a more sustainable and inclusive model of growth by harnessing the knowledge, insights and expertise of all stakeholders including employees and their representatives. As discussed previously both the Scottish and Welsh devolved administrations consider structured sectoral social dialogue to be key to increasing the incidence of 'fair work'. Sectoral social dialogue has the potential to foster a more robust shared understanding of the 'real' challenges and opportunities within different sectors of the economy. Equally, it can facilitate the development of more tailored and customised responses to the needs of particular sectors. As already highlighted, the JLC structures, when effective, can support the development and enhancement of particular sectors and produce collective agreements that deliver for both parties. As the Labour Court (2018) notes JLC's facilitate sector level engagement that can produce consensus on a framework of sector appropriate arrangements as regards the regulation of conditions of employment not specifically dealt with in employment law.

Pembroke (2018) argues that the Irish labour market is characterised by the increased incidence of precarious work – income unpredictability, employment insecurity and limited access to social security - and that this trend will continue both in general and within certain sectors. Research by McGuinness *et al.*, (2018) found that 'contingent' or non-permanent employment has fallen back to pre-recession levels and is below the EU average. At one level, the evidence on the prevalence and growth of at-risk categories of precariousness in Ireland is mixed (Nugent *et al.*, 2019). At the same time, these authors contend that there is evidence of a growth in the share of several at-risk categories of precarious work, including, underemployment, marginal part-time work, part-time temporary contracts and involuntary temporary contracts. Certainly, it appears evident that there are certain sectors notably wholesale and retail; accommodation and food services; tourism and health and social care in which low pay, and less favourable terms and conditions of employment are more prevalent. These issues are not necessarily confined to 'traditional' sectors of the economy as a recent study suggested that low pay, limited benefits and work intensity are key issues for many workers in the growing gaming industry in Ireland (Moody & Kerr, 2020). There is also concern that younger workers are also experiencing higher levels of precarity (Nugent, 2020). These various trends reaffirm the potential benefits of adopting a sectoral social dialogue approach to the issue of 'securing' good jobs in the economy.

The Covid-19 crisis served to crystallise the essential nature of the retail sector and retail workers were on the frontline of the national response to this unprecedented public health emergency. Notwithstanding that this has become a more diverse and complex sector, it is also apparent that there are growing concerns about the quality of work in this sector. In response to this the Irish Congress of Trade Unions' Retail Sector Group, which comprises unions representing workers in retail and distribution across the island of Ireland (Mandate, SIPTU, Unite, USDAW and the GMB), have initiated a new campaign designed to address low pay and insecure work, and rebuild the sector post-Covid-19. In particular the unions have called for a renewed focus on decent work premised on improved pay and conditions, trade-union representation, collective bargaining and access to training and upskilling (ICTU, 2020). They have also recommended the establishment of tripartite Retail Stakeholder Group, comprising trade unions, retail employers and key government departments, to formulate a new blueprint for the ongoing development of the retail and distribution sector. This is potentially a very interesting initiative for a key sector of the economy. Not surprisingly the trade unions emphasise the importance of improved pay, better conditions, employee voice and collective bargaining. Importantly they link the achievement of these conditions to the broader agenda of developing a more sustainable and productive sector characterised by 'decent work'.

The recognition due to Covid of the need to reappraise what constitutes good jobs and how we value different types of work and roles, and in particular essential work has served to focus attention on the terms and conditions of employment. Similarly, the growing recognition of the benefits of creating a good jobs economy has also shone a light on this issue. Importantly enhanced employee voice and access to collective bargaining outcomes are increasingly viewed as part of the response to the challenge of valuing all work appropriately and creating a higher incidence of good work.

## 10. Regulated Voluntarism

As was highlighted earlier the last three decades has witnessed a substantial increase in the body of employment legislation focused in particular on individual employment rights. EU level initiatives have been a key factor in this development. At the same time the Irish Government, while maintaining that voluntarism has ‘served the state well’ have also displayed a willingness to initiate domestic-inspired legislation that regulate key aspects of the employment relationship.

In 2017 the Irish Government adopted the Competition (Amendment) Act 2017) which provides that section 4 of the Competition Act 2002 (prohibiting cartel action) shall not apply to collective bargaining and agreements in respect of three categories of workers;

- voice over actors, session musicians and freelance journalists;

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- the false self-employed, and

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- fully-dependent self-employed workers.

As Doherty (2018) notes, ‘this legislation represents an innovative attempt to extend collective bargaining rights to vulnerable workers, who do not fit within the classic employee definition’ and sets out in law ‘the principle that collective representation should not be automatically denied to those who cannot satisfy traditional tests of employee status’. It is suggested that this legislation could be utilised to cover certain categories of gig or platform-based workers, thus enabling them to be covered by a negotiated collective agreement (Doherty, 2018; Prassl, 2018).

In response to concerns about potentially growing levels of precarious work the Government passed the Employment Miscellaneous Provisions Act with the aim of improving the security and predictability of working hours for employees on insecure contracts and those working variable hours.<sup>61</sup> The Act provides that;

- Zero Hours contract will be restricted;

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- there will be minimum payments for people called into work but sent home without work;

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- a ‘band of hours’ system will be introduced where an employee’s contract does not reflect actual hours worked;

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- there are strong anti-penalisation provisions for employees who invoke their rights under this legislation;

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- National Minimum Wage rates for younger people and trainees have been simplified, and

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- employers shall give employees core terms of employment within 5 days of starting work.

<sup>61</sup> Following increased concern regarding the use of ‘zero-hour’ contracts, particularly in the retail and hospitality sectors the Workplace Relations Commission, commissioned the University of Limerick to undertake research on this issue. Their subsequent report (2015) ‘A Study on The Prevalence of Zero Hour Contracts among Irish Employers and their Impact on Employees’ in Ireland’ found that while ‘zero-hour’ contracts within the meaning of the Organisation of Working Time Act 1997 were not extensively used in Ireland, there was evidence of the use of so-called ‘if and when’ contracts. The Employment Miscellaneous Provisions Act 2017 was developed as the Government’s response to this report.

Commenting on the Act, the then Minister for Employment Affairs and Social Protection, Regina Doherty T.D. stated that

*This new law will profoundly improve the security and predictability of working hours for employees on insecure contracts...is rooted in the foundation of extensive consultation and is a balanced and fair measure for both employees and employers...In a changing world, this reform ensures that the available legal protections will match the conditions experienced by a modern workforce... (Minister Regina Doherty, T.D.)<sup>62</sup>*

Describing it as one of the most important pieces of employment law in the last twenty years, the ICTU state that this act will improve workers' rights by affording greater legal protection to the working hours of the lowest-paid and most vulnerable workers.<sup>63</sup> Interestingly the trade union Fórsa (2021) contend that the use of 'banded hours' to provide greater certainty on the hours that employees will work is a good example of how to support the achievement of the Commission's objective of an adequate minimum wage for all workers as set out in the Adequate Minimum Wage Directive (AMWD).

As was discussed in section 4 the Government remains strong advocates of the benefits of statutory wage setting mechanisms and have asked the High Level Working to review these statutory provisions, and where appropriate make recommendations for their reform. Although various factors have undermined the effectiveness and coverage of these mechanisms, the former deputy chair of the Labour Court, Ms Caroline Jenkinson, indicates that JLCs still represent 'a process for more collective bargaining to take place'.<sup>64</sup> Sectoral bargaining and associated extension agreements, covering companies in the same sector who are non-signatories, contribute to higher collective bargaining coverage in a number of EU states (Eustace, 2021).

One of the core benefits of SEOs' identified by a number of employer sectoral associations bodies is that it prevents companies from seeking competitive advantage through the erosion of employment standards. This can serve to encourage or indeed force companies to invest in innovation, technology, staff and training as the basis of their business model. This perspective on the role of statutory wage setting mechanisms resonates strongly with the EU Commissions contention that the AMWD can support a model of competition within the Single Market premised on high social standards, innovation and productivity improvements rather than a 'race to the bottom'. Similarly the capacity of SEO's and ERO's to raise wages in traditionally low paid sectors accords with the emphasis on 'income adequacy' and a decent living standard that is at the core of the AMWD. This suggests that reaching agreement on how to strengthen and enhance existing statutory wage setting mechanisms could be a viable way of meeting some of the key provisions of the AMWD.

The statutory wage setting mechanisms have been described as backing up or supporting the voluntarist system. It may actually be more appropriate to consider them as interdependent parts of an evolving industrial relations regime. In this context regulated or modified voluntarism would appear to be a more apt description of the Irish employment relations regime.

Interestingly while the debate in Ireland around collective bargaining rights has traditionally being framed as a choice between voluntarist and 'rights-based' approaches a leading UK employment relations expert in a debate on the Irish context stated there is no inherent conflict between voluntarism and the law.

*Collective bargaining has to be voluntary, as to its content and process, but that doesn't mean that the law can't compel the parties to participate in collective bargaining. I don't see a contradiction there. (Lord Henty QC, 2021)<sup>65</sup>*

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<sup>62</sup> <https://www.rte.ie/news/ireland/2019/0304/1034135-legislation-workers/>

<sup>63</sup> <https://www.ictu.ie/press/2019/03/03/goodbye-zerohour-contracts-hello-guaranteed-workin/>

<sup>64</sup> See Prendergast (2021b).

<sup>65</sup> Cited in Prendergast (2021b)

Eustace (2021) notes that in the Netherlands, the government's capacity to introduce extension agreement serves as an incentive for employers to engage 'voluntarily' in collective bargaining so that they can seek to influence the outcome rather than have an agreement imposed on them. In essence, this is an example of voluntary collective bargaining in the shadow of the state.

Notwithstanding question marks regarding the effectiveness of the various statutory initiatives discussed in this section they do represent attempts;

- to extend collective bargaining rights to vulnerable workers, who do not fit within the classic employee definition';

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- to improve the security and predictability of working hours for employees on insecure contracts and those working variable hour; and

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- to provide agreed minimum standards for pay and conditions in specific sectors of economy including those characterised by low pay.

Although extending collective bargaining coverage in Ireland, as envisaged by the AMWD will require an innovative and comprehensive action plan this may not necessarily represent, as has been suggested a fundamental altering of the industrial relations landscape so much as a strengthening, extending and enhancing of certain existing characteristics of it. The Government, in consultation with the social partners, has displayed a willingness to regulate, by either law or agreement, key aspects of the employment relationship to achieve certain economic and social objectives. The question is will the current process of tripartite deliberation have the capacity to formulate a further raft of 'agreed' regulatory initiatives.

## 11. Business and the New Collectivism

The decision by Ibec to participate in the High-level group's review is significant and suggests a willingness to explore policy changes that are consistent with Irish business competitiveness, fairness and dynamism. Although critical of the EU Commission's decision to issue a binding Directive in relation to pay and collective bargaining, they are equally aware that the 'political' landscape – nationally, within the EU and internationally – has changed and that there is a tangible momentum building around the issue of strengthening employee and trade union rights (see section 6). The CEO of Ibec, Danny McCoy, has referenced what he has called the 'new collectivism' and highlighted that is key that employers engage with this agenda to ensure that they help shape the outcomes in both Ireland and the EU.

Indeed while reiterating the importance of not damaging our business model and also the Constitutional right of employers not to engage in collective bargaining, Danny McCoy has indicated that Biden's support for collective bargaining for example could influence developments in Ireland (Sheehan, 2021e).

*The traditional route in Ireland has been very much wedded to the US tradition and the Biden administration has very firmly swung the pendulum towards collective bargaining, minimum wages and a right to union recognition...so in my defence I didn't start it.' (Danny McCoy, cited in Sheehan, 2021e).*

Ibec are clearly cognisant of 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. Indeed Danny McCoy notes that with business leaders increasingly professing a desire to move to a stakeholder value model in all its guises, collective agreements with employees will be particularly significant in Ireland. The Ibec leader has clearly signaled to his constituency that while the LEEF will deal with range of employment issues including the Return to Work protocol, flexible working and the right to disconnect and social insurance and sick pay, collective bargaining over employee terms and conditions will be very much at the centre of its deliberations.

*increasingly the issue of how to determine the terms and conditions of employment, be that wages, entitlements, pensions or leave arrangements is increasingly seeking a forum that can be best described as one to deliver collective agreements (Danny McCoy, 2021).*

At the same time, it is important to note that the Ibec CEO has been a strong advocate of meaningful peak level social dialogue, and championed the capacity of collective deliberation to address strategic challenges facing society. In this context it is important to recognise also the growing importance to business internationally of the Environmental, Social and Governance (ESG) agenda. The strategic agenda being explored within the LEEF it is argued provides business with an opportunity to bring sustainability and stakeholder capitalism into the debate around the future development of Ireland's economy and society. This however will require that business leaders and individual companies also engage with the needs of their employees as they seek to continue grow the economy in sustainable manner.



## 12. Building Support for New Approaches

Given the debate around enhancing collective bargaining rights in Ireland in the context of High Level Group's review, it is important to recognise that a 2021 CIPD Ireland survey found that the majority of non-union firms remain strongly opposed to adopting any form of collective bargaining (Sheehan, 2021d). This resistance, it is suggested, will become quite vocal as the debate around the collective bargaining agenda progresses. Within the influential FDI sector the introduction of legislation guaranteeing a right to bargain could be viewed as undermining the right of many MNC's to adopt a model of direct employee engagement (Stratis, 2021). Such a development, would, it is suggested, also damage Ireland's relative attractiveness in relation to future rounds of investment (*ibid.*). Kevin Duffy, a former Chairman of the Labour Court, has argued that an EU level solution on bargaining rights could mitigate concerns regarding the impact that any local legislative move would have on foreign direct investment, as the same rules will apply throughout the European Union (Sheehan, 2019a).<sup>66</sup> MNC's have displayed an ongoing capacity to adapt their employment relations strategies to different institutional and national contexts within the EU. Eustace (2021) for example notes that in Belgium MNC's who do not engage in collective bargaining in their home country, are incentivised by labour law to join employer associations and engage in sectoral bargaining in this host jurisdiction.

Interestingly some non-unionised MNC's in the pharma, chemicals and medical devices sectors have, in cooperation with trade unions, developed innovative 'stability agreements' which represent a new form of collective bargaining outside of the traditional trade union recognition model (Sheehan, 2018). A central feature of these agreements is the use of an Orderly Dispute Resolution Framework (ODRF) that incorporates an agreed joint worker-manager forum for resolving collective and individual disputes.<sup>67</sup> These voluntary arrangements appear to offer non-union firms and unions seeking recognition, a practical and alternative way to engage on issues without either having to compromise their core principles. It is suggested that across a number of firms they have contributed to an improved employment relations culture and the emergence of an interest based and problem-solving attitude that has helped to deliver a range of mutual benefits including; greater stability and certainty; more flexible working practices; a professional approach to dispute resolution; steady wage growth and job creation (Sheehan, 2018; 2021e). Sheehan (2021e) suggests that the ODRF approach is relevant to the social partner based LEEF review of collective bargaining and industrial relations as it suggests that a non-standard union-management recognition arrangements can deliver collectively-bargained outcomes that meet the needs of both parties. In one MNC this process for example has facilitated the negotiation of three successive collective agreements over a four year period (Sheehan, 2021e). The identification and promotion of these type of innovative arrangements will be key to attenuating potential employer opposition to initiatives designed to provide greater access to collective bargaining.

The decision by the Irish Management Institute to negotiate an exclusive recognition and negotiation agreement with SIPTU for non-managerial staff is also a potentially significant development as it could signify a wider shift in the attitude towards collective bargaining in workplaces that were heretofore non-union (Prendergast, 2021b).

<sup>66</sup> Patricia King (General Secretary, ICTU) makes the same point in explaining ICTU's focus on an EU Directive as the cornerstone of their collective bargaining strategy (Sheehan, 2019b)

<sup>67</sup> In practice there are a number of different ODRF models for example the embedded model; the hybrid model and the independent model (see Sheehan 2018).

As the discussion on statutory wage setting mechanisms revealed employers are not a homogenous constituency as individual companies and employer representative bodies, within and across particular sectors, displayed not only different but quite polar views on this issue. In his address to business leaders the Tánaiste urged them to get behind Ibec as they engage with the review of collective bargaining and industrial relations. Equally, there will be an onus on Ibec, and its counterpart ICTU, to champion and promote any negotiated outcome from peak level deliberations and to proactively engage in debate with their respective constituencies. Eustace (2021) refers to research in the Netherlands that shows that employer suspicion of ‘extension agreements’ was reduced as they were put into operation and evidence emerged that they had a positive impact on business by preventing undercutting on the basis of poor labour standards. This suggests the need to for the government and the social partners to actively monitor any new initiatives or policy instruments that are adopted in the wake of the strategic review. This will require a willingness to draw on the knowledge and experience of companies and employees on the ground in seeking to make the ‘business case’ for any new actions or measures.

## 13. Public Procurement: Setting Standards and Ensuring Compliance

One of the main provisions of the draft AMWD is the requirement that states, where collective bargaining coverage is less than 80 per cent of workers, provide for a framework of enabling conditions for collective bargaining, either by law after consultation with the social partners or by agreement with them, and establish an action plan to promote collective bargaining. This 'requirement' although challenging does provide an opportunity to consider how other areas of public policy can be better utilized to support collective bargaining and the maintenance of good employment standards.

Eustace (2021a) highlights that states can use public procurement policy as sort of '*de facto extension*' agreement to require compliance with collective agreements. The Danish Government makes extensive use of public procurement to oblige private enterprises tendering for state contracts to sign up to collective agreements. The same author notes that some commentators are of the view that 'in some respects , pay clauses in procurement can be seen as a substitute for legal extension mechanisms.' (Eustace, 2021a)

The Netherlands is also a front-runner in the use of public procurement to achieve social objectives. Since 2013, the Dutch Government has required that businesses awarded state contracts demonstrate compliance with core ILO standards, including the conventions on collective bargaining and freedom of association. These are binding as terms of all state contracts. Social return conditions in state contracts sets the percentage of the fee that is to be spent on wages, thereby constraining the capacity to squeeze wages to bolster profits. As outlined in Section 7, the Biden administration introduced a Federal minimum wage rate into its public contracting procedures for projects exceeding \$35m and also ensured that a commitment to the payment of prevailing (typically union) wage rates was incorporated into the Infrastructure Bill.

The Welsh Government have recently introduced a new draft Social Partnership and Public Procurement (Wales) Bill that aims to achieve three interrelated policy objectives - strengthen social partnership, deliver fair work outcomes and ensure socially responsible public procurement (Welsh Government 2021a). In relation to the latter area the Bill sets out the duties on public bodies to ensure that when procurement is undertaken there is consideration of economic, social, cultural and environmental well-being and fair work. The Scottish Fair Work Convention have also established a Construction Industry Inquiry Group that is looking at the practical challenges of using public-sector commissioning and procurement to deliver fair work in the construction sector.

In Ireland, a combination of an overt focus on securing value for money and a rather narrow interpretation of EU regulations has ensured that traditionally there has been a degree of reticence in using social clauses in public procurement to achieve particular social and economic outcomes. The Office of Government Procurement (OGP)'s establishment of a cross-departmental Social Considerations Advisory Group in conjunction with D/PER's publication of 'Circular 20/2019: Promoting the use of environmental and social considerations in public procurement' suggests however the emergence of a more supportive framework for using social clauses to policy goals. It has also been indicated that there is an opportunity to proactively use state building projects to promote better working conditions, a more diverse workforce and longer-term career prospects within the construction sector. The examples from other EU states clearly demonstrates that it is possible for the Irish Government to use public procurement to promote collective bargaining and ensure compliance with agreed employment standards while still adhering to the relevant EU regulations on public procurement . Interestingly the AMWD contains a requirement that economic operators receiving public money through procurement contracts will have to respect the right to organise and bargain collectively both in the awarding and the performance of the public contract in line with ILO Conventions 87 and 98.

## 14. Conclusion

This paper recognises that the policy issues being considered by the High-Level Review Group - collective bargaining and trade union recognition; the statutory wage-setting mechanisms and the EU's proposed Adequate Minimum Wage Directive – have their own history, complexities and challenges, and forging consensus and agreement will be difficult. At the same time there is an awareness of the need to put place an employment relations regime that is “fit for purpose’ and capable of meeting the needs of a 21st century economy, labour market and society. Although this will be challenging there are elements and aspects of each policy issue that can unlock constraints, open up new possibilities and foster consensus in the others, which is why it is important that the High-Level Group explored them in strategic and integrated manner. Equally it is argued that there now exists a set of envioning conditions that are constraining and incentivising the actors towards a more meaningful, open and constructive engagement on these and related industrial relations issues. While the outcome from the High-Level Review Group’s deliberations will be critical in terms of influencing future policy developments, it should be seen as part of an ongoing process of social dialogue focused on how a more developmental approach to industrial relations can contribute to a more dynamic and fairer labour market, increased innovation, higher productivity and a ‘good jobs’ economy.

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# Publications

Council Reports					
No.	Title	Year	No.	Title	Year
1	Report on the Economy in 1973 and the Prospects for 1974	1974	14.	Population Projects 1971-86: The Implications for Social Planning—Dwelling Needs	1976
2	Comments on Capital Taxation Proposals	1974	15.	The Taxation of Farming Profits	1976
3	The Economy in 1974 and Outlook for 1975	1974	16.	Some Aspects of Finance for Owner-Occupied Housing	1976
4	Regional Policy in Ireland: A Review	1975	17.	Statistics for Social Policy	1976
5	Population and Employment Projections: 1971-86	1975	18.	Population Projections 1973-86: The Implications for Education	1976
6	Comments on the OECD Report on Manpower Policy in Ireland	1975	19.	Rural Areas: Social Planning Problems	1976
7.	Jobs and Living Standards: Projects and Implications	1975	20.	The Future of Public Expenditure	1976
8.	An Approach to Social Policy	1975	21.	Report on Public Expenditure	1976
9.	Report on Inflation	1975	22.	Institutional Arrangements for Regional Economic Development	1976
10.	Causes and Effects of Inflation in Ireland	1975	23.	Report on Housing Subsidies	1976
11.	Income Distribution: A Preliminary Report	1975	24.	A Comparative Study of Output, Value-Added and Growth in Irish and Dutch Agriculture	1976
12.	Education Expenditure in Ireland	1976	25.	Towards a Social Report	1977
13.	Economy in 1975 and Prospects for 1976	1975	26	Prelude to Planning	1976

27	New Farms Operators, 1973 to 1975	1977	42	Report on Policies for Agricultural and Rural Development	1978
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29	Some Major Issues in Health Policy	1977	44	Comments on Development: Full Employment	1978
30	Personal Incomes by County in 1973	1977	45	Urbanisation and Regional Development in Ireland	1979
31	The Potential for Growth in Irish Tax Revenues	1977	46	Irish Forestry Policy	1979
32	The Work of the NESc 1974 - 1976	1977	47	Alternative Strategies for Family Support Income	1980
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34	Alternative Growth Rates in Irish Agriculture	1977	49	Enterprises in the Public Sector	1980
35	Population and Employment Projections 1986: A Reassessment	1977	50	Major Issues in Planning Services for Mentally and Physically Handicapped Persons	1980
36	University and Selectivity; Strategies in Social Policy	1978	51	Personal Incomes by Regions: 1977	1980
37	Integrated Approaches to Personal Income Taxes and Transfers	1978	52	Tourism Policy	1980
38	University and Selectivity: Social Services in Ireland	1978	53	Economic and Social Policy: Aims and Recommendations	1980
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