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Make me good...just not yet? Ireland and the Adequate Minimum Wage Directive

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Coming soon to a tripartite forum near you...

- Adequate Minimum Wage Directive
- ~~Adequate Minimum Wage Directive~~
- Collective Bargaining Directive!
- 'We're not in Kansas anymore' (CEO of Ibec, Danny McCoy, 2023)



1. First, a little context....

Living in an Anglo world



- 'Anglo-Saxon' model tends to be grounded in conflict
- Common law focus on that 'great indispensable figment of the legal mind' the contract of employment (Kahn-Freund)
- collective agreements not legally binding/ single channel model (no Works Councils)
- Freedom of association – right to join a union (only?)



1. Living in an Anglo world



- The history of the interaction of the common law and the field of industrial relations has been being ‘particularly strained... The individual, contractual, focus of what was at one time called the Law of Master and Servant was not easily reconciled with the collectivist approach of the developing trade union movement’.



1. Living in an Anglo-World

- ***McGowan & Ors v The Labour Court [2013]***- sectoral *erga omnes* extension system unconstitutional
- appears 'somewhat anomalous' today and give rise to the 'prospect of burdensome restraints on competition for prospective employers and intrusive paternalism for prospective employees'.



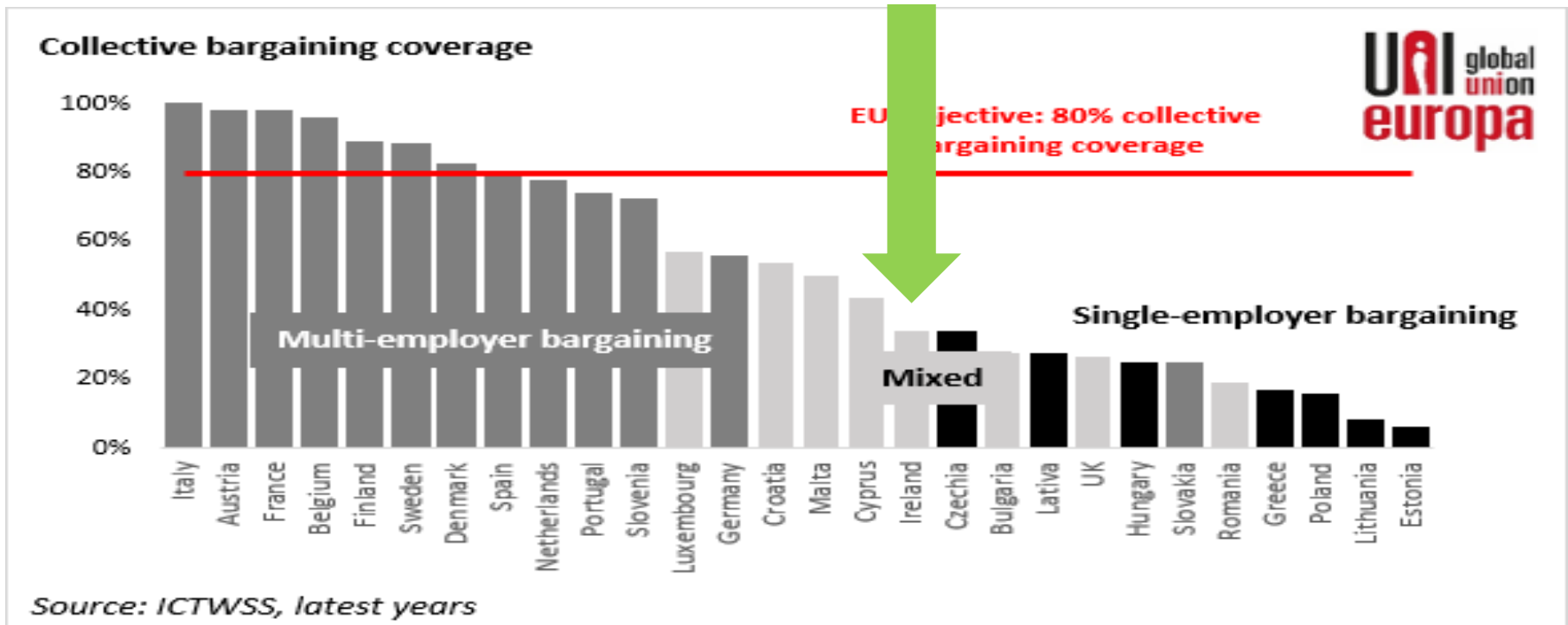
1. The Way to Save Us from Ourselves...Enter the Eurovision

- Rec 19: ‘it is essential that the Member States **promote collective bargaining**, facilitate the **exercise of the right of collective bargaining on wage setting** and thereby enhance the wage setting provided by **collective agreements** to improve workers’ minimum wage protection’.
- Rec 18 states that ‘**strong and well-functioning collective bargaining** together with a high coverage of **sectorial or cross-industry collective agreements** strengthen the adequacy and the coverage of **minimum wages**’



1. 2021: The Directive is coming....

- Member States with a collective bargaining coverage rate below 80% must adopt 'measures' with a view to enhancing collective bargaining.
- action plans and frameworks to facilitate collective bargaining; subject to ongoing review.



1. High-Level Group on Collective Bargaining (Mar 2021)

- **Employer representatives:**

- Danny McCoy (Ibec);
- Maeve McElwee (Ibec);
- Tom Parlon (CIF)

8

- **Trade union representatives:**

- Kevin Callinan (Fórsa/ ICTU)
- Joe Cunningham (Siptu)
- Patricia King (ICTU)

- **Government representatives:**

- Clare Dunne (-end 2021); Dermot Mulligan (civil servants);
- Prof Bill Roche (academic; UCD);
- John Shaw (civil servant)

- **Chaired by....**



1. High Level Working Group on Collective Bargaining



- Package of recommendations; aim=ensure Ireland is well placed to fulfil upcoming EU law obligations in the context of a genuine tripartite approach
- Improve functioning of Joint Labour Committees (sectoral; *erga omnes*)
- Proposes a mechanism for Good Faith Engagement at enterprise level (where no collective bargaining takes place)



2. Key Issues Now That the Clock is Ticking...

- ‘We’re not in Kansas anymore’ (Danny McCoy, 2023)
-but where are we?
- Recent survey data suggests both a ‘representation gap’and....
- Growing employer interest in ‘non-union bargaining’
- Increasing coverage via JLCs is not really CB (but CB in the shadow of the law...?)
- What has to be done in 2024? 2025?



vs.



2. Unions

- could ‘transform the union landscape’ (ICTU Gen Secretary)
- Focus is on **access** of unions to workers; of unions to employers (for CB)
- Protections for union reps



2. Employers

adjustment of the
references in Irish Law
to collective bargaining
is not necessary

- 'little if any
legislative change
required for the
transposition of
the directive

'a comprehensive suite of
industrial relations
legislation...already exists in
Irish law'



2. State: Make me good... Just not yet.....

- Challenged proposal for Directive (legal competence)...
- ...but set up HLG to prepare.....
- Lauded publication of HLG Report.....
-but now 'too early' to talk about any targets for CB...



3. The challenges: Some thoughts....

- Long-term resistance to measures that infringe on employers' right to manage (political; policy; legal)
- International picture post-Covid (e.g ESG)?
- Directive is clear: Member States **shall**....
- Unions: can they capitalise?



The only fair
is laissez-faire.





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Thanks for listening!

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