

**European Directive
on
Adequate Minimum Wages and Collective Bargaining
Looking a Gift Horse in the Mouth?**

**14th. Annual NERI Labour Market Conference
South East Technological University (SETU)
Waterford 26th. May 2026**



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Introduction

Minimum or Adequate Minimum Wages - hardly a novelty

- ▶ During late 19th. Century the idea of market failure emerged. It recognised that in some markets the assumption of perfect competition did not hold.
- ▶ Particularly in labour markets populated by 'weak labour market groups.' or 'sweated labour' - Sweated occupations are those with very low wages – inadequate for subsistence and to amount of work done – often long hours of work in insanitary conditions.
- ▶ Conditions giving rise to sweated labour identified as oversupply of labour and absence of trade union organisation.
- ▶ Government response at time was establishment of Trade Boards (1909) the job of these boards was to establish legally enforceable minimum rate of pay in certain trades.
- ▶ The IR act 1946 which established Labour Court placed the existing Trade boards under the control of the court and renamed them as Joint Labour Committees (JLC's)

Winston Churchill responsible for the establishment of the Trade Boards (1909) explained the problem they addressed.

“It is a serious national evil that any class of His Majesty’s subjects should receive less than a living wage in return for their utmost exertions. It was formerly supposed that the working of the laws of supply and demand would naturally regulate or eliminate that evil. -

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But where you have what we call sweated trades, you have no organisation, no parity of bargaining, the good employer is undercut by the bad and the bad employer is undercut by the worst; the worker whose whole livelihood depends upon the industry, is undersold by the worker who only takes the trade as a second string. His feebleness and ignorance generally renders the worker an easy prey to the tyranny; of the masters and middle men”.*

- ▶ The object of this historical note is to point to the persistence of the payment of below subsistence wages and the remedy - long ago identified, as worker organisation and representation by trade unions.
- ▶ As will be seen that remedy has now been adopted by the EU Directive on Adequate Minimum Wages

What is an EU Directive

- ▶ It is a Legislative Act which sets out a goal which all EU Member States must achieve.
- ▶ However, it is up to individual Member States to devise their own laws to reach this goal.
- ▶ Member States have two years in which to transpose the Directive into national law.

Origin of the Directive

- ▶ It arose from the comprehensively failed promise of Neo-Liberalism.
- ▶ Neo-Liberalism.
- ▶ Essentially it holds that dismantling all impediments to the free play of market forces will increase business efficiency, effectiveness and provide prosperity for all.
- ▶ Policy
- ▶ De-regulation – of financial system – privatisation of state enterprise – labour market de-regulation – and curbing or eradicating trade unions.
- ▶ Result post 2008/9
- ▶ financial collapse – austerity – growing concentration of wealth and a disparity between mass of citizens and tiny wealthy minorities.

Acknowledgement of foregoing by EU Directive

- ▶ Directive recognises that –
- ▶ *“structural trends reshaping labour markets such as globalisation, digitalisation and the rise of non-standard forms of work, especially in the service sector have led to increased job polarisation resulting in an increasing share of low paid and low skilled occupations, and have contributed to an erosion of traditional collective bargaining structures. This has led to more in work poverty”.*
- ▶ Who will be covered by Directive
- ▶ Will apply to all workers who have an employment contract as defined by law or collective agreement. Genuinely self-employed workers will not come within the scope of Directive.

Goals or Aims of Directive

- ▶ Directive aims to ensure that workers in the EU are protected by adequate minimum wages allowing for a decent living where ever they work.
- ▶ To realise these objectives the Directive aims at promoting Collective Bargaining on wages in all Member States. This approach taken because countries with high collective bargaining coverage have fewer low wage workers and high minimum wages.
- ▶ Consequently, Directive requires all Member States where collective bargaining coverage is below 80% of employed workers to provide a framework and action plan to promote union recognition and collective bargaining

What is Collective Bargaining

- ▶ Internationally accepted Definition of C/B provided by ILO. Convention No 154 (Article 2) to which Irish State a signatory.
- ▶ *“All negotiations which take place between an employer, a group of employers, or one or more employers’ organisations, on one hand and one or more workers organisations on the other”*
- ▶ In addition, the ILO holds ‘the C/B cannot begin until a union is recognised for that purpose’.
- ▶ To meet the Directive’s requirement of 80% C/B coverage it seems the Irish State must actively facilitate workers seeking union recognition – Statutory Recognition ?

% of Workers in Republic covered by Collective Bargaining

- ▶ Union Recognition in the Public Sector generally non problematic. C/B coverage of 80% or more has already been achieved there.
- ▶ In the Private Sector union density or the % of employed workers organised in unions is at historic low. About 15% of private sector workers are organised in unions. If unorganised workers covered by Sectoral Employment Orders are included then C/B coverage may be a little over 20%.
- ▶ Any strategy to realise the Directive's requirement (80% coverage) must focus on the Private Sector. At present overall C/B coverage of public and private sector workers – 34%

Response of Irish Government to EU Directive

- ▶ Established a 2nd. High Level Group under auspices of the LEEF (Labour Employer Economic Forum)

Report and Recommendations

The first item on agenda - issue of union recognition.

Given short shrift – Constitutional difficulties and Voluntarism cited as obstacles. There are no Constitutional obstacles. – Voluntarism no difficulty

No more was heard of recognition.

Recommendations of 2nd. High Level Group (LEEF)

- ▶ (1) The central recommendation - expansion of the existing system of Joint Labour Committees JLCs, Sectoral Employment Orders SEOs and Employment Regulation Orders EROs as a way to extend collective bargaining coverage.
- ▶ (2) A Right to Bargain as per 2001/4 IR Amendment Acts – value of right to bargain absent Statutory Recognition?
- ▶ (3) Establish the principle of Good Faith Engagement or Bargaining in Good Faith. (under 2015 Act) - Demand for Good Faith Engagement can be made once every 3 years.
- ▶ Good Faith Engagement or Bargaining where employer refuses to recognise union ? – An example of Bad Faith?

Potentially Positive Outcomes of Directive's implementation as per High Level Group's Recommendations

- ▶ For vulnerable unorganised private sector workers extension of operation and coverage by JLCs and associated SEOs and EROs would likely be beneficial.
- ▶ They would benefit from predictable and standard wage setting negotiated by unions on JLC.
- ▶ Wages would likely increase bringing them closer to the Directive's target of establishing and maintaining a living wage.
- ▶ This would be a worthwhile outcome.

Possible Pitfalls

- ▶ As unorganised workers they would remain disenfranchised, mere passive beneficiaries or free riders.
- ▶ Within their individual enterprises they would exercise little if any influence on decisions affecting their daily working lives.
- ▶ Nevertheless, some of these worker might rest content satisfied with improved wages and conditions.
- ▶ Others might wish to organise and seek recognition but dissuaded from such action on three counts.

3 Obstacles to Organisation

- ▶ (1) Existing and well documented formidable opposition from employers
- ▶ (2) The challenge of successfully navigating the rigmarole and ambiguities surrounding the 'Right to Bargain'.
- ▶ (3) The difficulties of deciphering the mystery of 'good faith engagement' based on 2015 Act – High Level report notes this legislation rarely used.
- ▶ In the absence of a Constitutional and Human Right to recognition inaction may be the most likely result.

Further possible unintended but negative consequences

- ▶ In the absence of a right to recognition collective bargaining coverage might very well increase but it could, unintentionally, function as a disincentive to unionisation.

Country	C/B Coverage	Union Density
France	94%	11%
Portugal	74%	18%
Spain	78%	19%

- ▶ Union density represents the percentage of employed workers organised in trade unions.
- ▶ Though these figures suggest a negative relationship between high levels of collective bargaining coverage and union density no definitive conclusion warranted – may be other factors at work.

C/B Coverage and Union Density in Scandinavia

Country	C/B Coverage	Union Density
Denmark	85%	64%
Finland	95%	68%
Iceland	86%	82%
Norway	66%	55%
Sweden	88%	65%

- Note – Union recognition non-problematic in Scandinavia Countries
- best outcome for union movement - Iceland

High Levels of C/B coverage and Low Levels of Union Density.

Does it Matter?

- ▶ Role of union(s) improved wages conditions and representing members interests at work . Union(s) also strive to increase membership – higher levels of membership growth promotes greater influence.
- ▶ Furthermore, in Europe unions have broader objectives as a social movement – involvement in creation of welfare states – enhancing democracy etc.
- ▶ Probability of these outcomes being realised depends on weight of union influence brought to bear on employers and governments.
- ▶ That in turn will be determined not by high levels of C/B coverage but by the percentage of workers organised in unions.
- ▶ Governments and employers confronted by union demands might reasonably ask 'how many battalions have the unions?' If answer is few then it will be safe to ignore demands of what might be called an unrepresentative interest group.

Minimising Pitfalls and Maximising Positive Potential of EU Directive.

- ▶ Suggest Union movement adopt a dual strategy re transposition of EU Directive. – expanded JLCs and union recognition.
- ▶ The object would be to ensure expansion of C/B coverage through operation of JLCs does not grossly outstrip union density or percentage of workers organised in unions.
- ▶ Ideally from a union perspective union density and C/B coverage should grow roughly in tandem – (see Iceland in table)
- ▶ In the absence of a right to recognition an approximation to this outcome is unlikely.

Recognition - A Series of Favourable Conjunctures

- ▶ For once the Irish trade union movement presented with a number of bargaining advantages regarding the implementation of Directive.
- ▶ (1) Directive itself proposes union recognition
- ▶ (2) Irish Constitution guarantees Freedom of Association
- ▶ (3) ECtHR interprets Freedom of Association (*Demir* Judgement) as involving not only the right to form and join unions but a concomitant indivisible right to recognition by employer for collective bargaining
- ▶ No constitutional obstacle in way of Statutory Recognition – union movement presented with an almost open door. – push to enter ?

Statutory Recognition and Reasonable Expectations

- ▶ Statutory Recognition would be a valuable aid in supporting union growth, increasing union legitimacy, and conferring a truly free democratic choice on unorganised employee with regard to union joining and recognition.
- ▶ Union recognition not a panacea for the ills of the Irish Trade Union movement – the hard work of organising and representing members will always have to be done. ‘Agitate, Educate, Organise’ remains relevant.
- ▶ Statutory Recognition would at the very least serve to minimise the potentially negative consequences of the Directive implementation and could strengthen the union movement.

Note – Statutory Recognition on Irish Statute Book since 1924 – No constitutional obstacles discovered to date

- ▶ The Railways Act 1924 Section 55.
- ▶ *From and after the passing of this Act, the rates of pay, hours of duty and other conditions of employment shall be regulated in accordance with agreements made, or from time to time made between the trade unions representative of such employees of the one part and the railway companies and other persons by whom they are respectively employed of the other part.*
- ▶ It is in effect Statutory Recognition – Should be noted fits almost perfectly with the ILO definition of Collective Bargaining.
- ▶ While amended by s. 46 of the Transport Act 1950 provision remains that rates of pay etc. be regulated by agreements entered into by the company and appropriate trade unions. Since that time statutory recognition extended to embrace the State education sector.
- ▶ After a century of operation, no legal difficulties have emerged or constitutional difficulties discovered. Recent SC judgement in O'Neill v Unite [2024] IESC 8 has expanded the Constitutional guarantee of F of A to apparently embrace a right to strike – equally embrace a right to recognition ?

Hope Deferred and Expectations Disappointed ?

- ▶ Owen Reidy Gen. Sec. ICTU initially hailed the EU Directive – *“as the most significant piece of labour legislation to come out of Europe in the last two decades. It is really phenomenal”*
- ▶ A recent publication (2025) ‘*Here Comes the Sun*’ by the European Trade Union Institute (ETUI) examined the impact of the EU Dir. on AMW in the 27 Member States and how it was implemented or given effect.
- ▶ The States were divided into three categories – Laggards (8) – Minimalists (10) - Frontrunners (9)
- ▶ Ireland was categorised among the Minimalists
- ▶ France categorised as Frontrunner – it had already achieved way over 80% Collective Bargaining coverage – union density 11%.

Ireland, implementation of EU Directive and Union Recognition

A concept that dare not speak its name

- ▶ Ireland's Action Plan to Promote Collective Bargaining.
- ▶ 5 Action Plans.
- ▶ (1) Understanding C/B and its impact.
- ▶ Comprehensive research on impact of C/B – more academic research – Value questionable – C/B round for more than two centuries.
- ▶ (2) Empowering and Encouraging
- ▶ Assumption that decline in C/B due structural shifts – very questionable – Action – again research and capacity building programmes – sponsor best practice award for excellent practices in C/B – echoes of once fashionable 'In Search of Excellence' or those awards of 'Best Place to Work' which on occasion turned out to be the worst place to work. – Best place to start under this heading Statutory Recognition.

Ireland's Action Plan to Promote Collective Bargaining continued

- ▶ (3) Promoting
 - ▶ Awareness campaigns on C/B by ICTU – IBEC and the LC/WRC.
 - ▶ Will IBEC be promoting awareness of C/B as a social good. Examine role of JLCs – already done Duffy Report – A suspension of legal attacks by employer's organisations questioning constitutionality of JLCs ?– Tax relief on union subscriptions – Union access to workplace – what happens if successful – most or all of workers join union – next step union recognition.
- ▶ (4) Protecting
 - ▶ Compulsory mediation – contradiction in terms – where stands voluntarism - UDA and increasing protection for union reps – a necessity but will it come before or after IBEC gets round to promoting C/B as social good.

Ireland's Action Plan to Promote Collective Bargaining continued

- ▶ (5) Supporting the IR Institutions.
- ▶ Review code of practice for employee reps. – Code of practice for employers absent but suggest bargain in good faith and recognise the unions if that is wish of employees.
- ▶ Technical assessors in dispute resolution – fine if confined to technical assessment of economics of competing claims of employer/employees but judgement on merits and circumstances remain exclusive to Labour Court/WRC adjudicators. Have to date done an excellent job.
- ▶ Increased uptake of IR certifications – problem is that IR is now ER, and in most universities and technological colleges ER incorporated in Human Resource Management programmes which start from the fundamentally incorrect assumption that there are no structural conflict of interests between those who supply labour and those who supply capital – all down to misunderstanding and poor communication or maybe lack of accreditation.
- ▶ Expansion or strengthening EROs/SEOs – seems to be central to so called Action Plan - what of employer opposition.

Response of European Employers to EU Directive

- ▶ From the outset European Employers refused to engage with the Commission in discussion on the Adequate Minimum Wage Directive. Business Europe characterised the Directive as a 'disaster'. (Business Europe October 2020)
- ▶ IBECs Director of Employer Relations stated 'no legislative changes are required for the transposition of Art. 4.1 of Directive due to the existing comprehensive suite of industrial relations legislation existing in Irish Law --- rather the Directive imposes an obligation of effort not result'. (IRN 25/01/2024)
- ▶ The governments Action Plan on Directive implementation appears to make an effort, though an incoherent one, and with little prospect of a concrete result.