

RESEARCH

REPORTS

RECOMMENDATIONS

MICHAEL HALPENNY

MAKING CEE UNIONS MATTER



**INSTITUTE OF
PUBLIC AFFAIRS**

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Social Policy Programme

This report is one of a series of Western expert commentaries on research findings about the visions of the Europeanisation of industrial relations which trade unions from Central and Eastern Europe have, particularly in regard to building common EU-level standards. The research was carried out in Bulgaria, Lithuania, Poland, Romania, Slovakia and Slovenia, as part of the project titled ARTUS CEE 'Articulation of the Trade Unions' - Strategies on upward convergence of social standards in the enlarged European Union – voices of CEE countries' (VS/2019/0070), which was led by the Institute of Public Affairs (Warsaw). The other partners were the Central European Labour Studies Institute (Bratislava), the Centre for Economic Development (Sofia), the Lithuanian Social Research Centre (Vilnius), the Institute of Public Policy (Bucharest), and the Faculty of Social Sciences at the University of Ljubljana.

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Introduction

(a) Methodology

The methodology used in the preparation of this report includes:

- Interviews conducted in February & March 2020 with nine senior and frontline trade union organisers and officials from Irish trade unions -- organising in both the private and the public sectors -- and also from the Irish Congress of Trade Unions (ICTU)¹
- The various country reports of the ARTUS project participants as presented for the Bucharest Workshop in February 2020 – Bulgaria, Lithuania, Slovakia, Slovenia, and Romania
- The ARTUS Project Comparative Report for the same countries²
- Desktop research
- In the format requested and according to the template provided.

(b) Republic of Ireland

The Republic of Ireland (ROI) is a small, open, mixed economy which has been a Member State of the EU since 1973, when it joined what was then the European Economic Community (EEC) along with the UK and Denmark. It has *inter alia* a major agribusiness sector, a sizeable part of which is export-led, and important tourism and construction sectors. Most significantly, the Republic has attracted Foreign Direct Investment (FDI), in the areas of IT, finance, pharma, and medical instruments, for example. However, the majority of companies in Ireland are SMEs and there is also a large public sector. Overall, it is estimated that up to 50% of employment is sustained by international demand.

The pull factors for FDI include Ireland's relatively low corporation tax rate, as well as its membership in the EU, which offers, to US companies in particular, a foothold into the European market as well as tax benefits from 'off-shoring'. Other positive factors often cited are a good education system and the English language. Previously, FDI was more concentrated in manufacturing and assembly, most of which has been transferred to manufacturing centres in the global East and South.

1 Irish Trade Unions interviewed include:
Irish Congress of Trade Unions (ICTU)
FORSA (Public Service)
MANDATE (Retail)
SIPTU (General)

Officials either provided information or opinions; sometimes both.

2 Unpublished draft version of February 2020 [*editor's note*].

5 [Michael Halpenny](#)

The population of the ROI is just under 5 million, with roughly one in eight having been born elsewhere. The active workforce is approximately 2.4 million, and the pre-COVID unemployment rate was 4%. Most people live in urban centres, with heavy concentrations in the Dublin area and the East, generally³.

There are two jurisdictions on the island: the Irish Republic, a sovereign state, which is and remains a member of the EU and is comprised of 26 counties, and Northern Ireland (NI), which is part of the United Kingdom, albeit with devolved powers, and consists of another six counties. The existence of two jurisdictions derives from the Anglo-Irish Treaty of 1921, which ended the Irish War of Independence but saw the partition of the island. In the recent Brexit Referendum in the UK, Northern Ireland, with its population of 1.8 million people, voted by a majority to remain in the EU but was compelled to leave nevertheless, as a constituent part of the UK.

As well as a long colonial experience, Ireland has a history of significant outward migration, mainly eastward to the UK and westward to the US, where there is a large Irish (American) diaspora. More recently, and particularly in the last two decades, the country has experienced significant inward migration from other EU Member States, the EEA, and third countries.

Even though there are two political and legal jurisdictions, the vast majority of trade unions on the island are affiliates of one all-Ireland trade union centre, the Irish Congress of Trade Unions, which has a Northern Ireland committee based in Belfast. Union membership is approximately 600,000 in the ROI and 200,000 in NI. There are 48 affiliates in all, covering general, craft, professional, technical, and administrative memberships in both the public and private sectors. This is significantly down from the 1990 figure of 70 affiliates and has come about through amalgamations -- encouraged by ICTU and facilitated by legislation⁴.

Union density is approximately 70% in the public sector and 20% in the private. Interestingly, while some of the US-owned MNCs are largely non-union, for example in the IT and finance sectors, others (in pharma and medical devices) are trade union organised.

The system of Industrial Relations is 'voluntarist' (meaning that employers and employees both engage in it voluntarily), while being underpinned by a

3 Central Statistics Office (CSO) Labour Force Survey Quarter 4, 2019: 2,471,700 (Employed, 2,361,200).

4 Act No. 19/1990 - Industrial Relations Act 1990, Section 22.2.

‘floor’ of statutory protective employment legislation, which is largely derived from EU directives and enforceable by individual complainant employees. Effectively, this means that voluntarism describes the trade-union-organised segment, whereas workers in non-union employments rely solely on the terms of their contracts, or the legal ‘floor’. Vindication of rights occurs through the State’s dispute-resolution machinery, the Workplace Relations Commission (WRC), which is a forum of first instance, and the Labour Court, which has an appellate jurisdiction⁵.

From the mid-1980s until 2011, there existed a highly-developed system of ‘social partnership’, which allowed for input by the trade union movement into wage bargaining and broad areas of policy at a national level. This was abandoned by the then-incoming centre-right-led coalition government of 2011, following allegations by right-wing commentators that social partnership was somehow a contributor to the economic crash of 2008/2009.

Freedom of association for trade unions is provided for in the Irish Constitution, but employers also have the right to dissociate, so that this ‘right’ becomes illusory, in that employers cannot be compelled to recognise a trade union if they do not do so voluntarily⁶. Similarly, while the law recognises the right of parties to collective bargaining, it is on a voluntary basis only as stated above, though there are certain mechanisms which can be said to constitute ‘substitute bargaining’, which have universal application in the sectors covered, and which are legally enforceable, such as Sectoral Employment Orders (SEOs) (construction, electrical contracting and mechanical engineering building services) and Employment Regulation Orders (contract cleaning and the security industry)⁷. (Since the time of writing the Irish High Court has struck down SEOs in the construction sector and the matter is being appealed to the Supreme Court.)

⁵ Act No. 16/2015 - Workplace Relations Act 2015.

⁶ Bunreacht na hÉireann (Constitution of Ireland), Article 40.6.iii.

⁷ Act No. 27/2015 - Industrial Relations Amendment Act 2015, Chapter 3, sections 13-21. (See also Chapter 2: Registered Employment Agreements.)

⁷ [Michael Halpenny](#)

Factors contributing to the objective of cross-border solidarity building among trade unions

(a) Positive

The Irish experience may be unusual, for the historical and political reasons touched on above, in that workers are organised by both Irish-based (headquartered) and British-based trade unions. Therefore, large Irish general unions, such as the Services Industrial Professional and Technical Union (SIPTU), operate side by side on the island of Ireland with large general UK unions like Unite, and, as has been pointed out above, both are affiliates of the same national trade union centre, ICTU. Hence, unions can operate across both jurisdictions -- the ROI and NI -- though it is fair to say that Irish-based unions are more typically found in the ROI, and vice-versa.

In terms of the legal architecture of industrial relations and employment rights, three salient features can be identified. Both the ROI and NI are common law jurisdictions with similar institutions. Membership in the EEC (and later the EU) has left a considerably common footprint in the area of employment rights in the ROI and in NI, where, incidentally, employment rights are one of the devolved areas of government. The industrial relations framework is not dissimilar in the broadest sense, in that there is a distinction between disputes of interest and disputes of right. However, there is divergence in areas of the law such as balloting and union recognition. As well as that, the Good Friday Agreement of 1998, which followed on the Ceasefire of 1994, established 10 cross-border bodies which provide an institutional framework and template for cooperation, outside of the trade union movement⁸.

Apart from this, many workers in border areas travel daily to work in the other jurisdiction, on the other side of the frontier. Therefore, their domiciles are on one side of the border while their jobs (and their employment contracts) are on the other.

There are good and long-standing relations between the ICTU and the British TUC, aided by the fact that many people who are Irish-born or of Irish descent have been or are currently prominent in the British Trade union movement. For example, the present TUC General Secretary is of Irish parentage.

⁸ Northern Ireland Peace Agreement (Good Friday Agreement) of 10 April 1998, Strand 2, paragraphs 5 (iv), 8 & 9.

Both Irish-based and British-based unions have been members of the ETUC as well as of the various sectoral organisations or federations in Europe, such as EFFAT, IndustriALL, ETF, etc. Unions also routinely interface with British-based trade unions. This occurs on a cross-border basis on the island of Ireland, cross-channel to the UK and within Europe, and also at the level of the enterprise through European Works Councils (EWCs), many of which were registered in Britain, pre-Brexit. Apart from a shared history (and on the island of Ireland, a shared national trade union centre), a shared language is a major plus.

Beyond that, the interface with trade unions in the rest of Europe has been via the ETUC, EWCs, and the European and global sectoral organisations.

While accepting that the Irish experience is markedly different from elsewhere in the EU, it is possible to identify positive indicators for cross-border cooperation, generally:

- A common framework of protective employment laws, derived from membership in the EU and the decisions of the Court of Justice of the European Union (formerly European Court of Justice)
- A common 'national trade union centre' and common affiliation to ETUC
- The opportunities offered by the EWC framework
- Broadly similar IR and employment rights legal frameworks
- A shared language
- Shared campaigns around support for macro issues (such as the Good Friday Agreement [see above] and on the impact of Brexit, emphasised particularly in the case of cross-border workers)
- The (largely-unexplored) possibilities of coordinated action on industrial matters other than broader campaigns organised by ETUC, for instance, around defending public services, and so on.

(b) Negative

- On the island of Ireland there is one trade union centre (albeit with a committee for NI); however, there are two similar but nevertheless distinct legal jurisdictions governing industrial relations, employment rights, and the governance of trade unions themselves. This inhibits, if not completely prohibits, the processing of IR or Employment law disputes across borders and complaints. Therefore, jurisdictional issues do limit the extent of cross border cooperation and action.

- Furthermore, the Directive on cross border mediation in civil and commercial matters⁹ is unclear, at best, in terms of whether it extends to employment-related disputes. There is a view, perhaps currently a hesitant one, that it can.
- Insofar as a common language can be a positive factor, language diversity, especially regarding those languages which are less widely spoken, can be a negative or inhibiting factor.
- At the level of enterprise, there can be conflict between the aims and objectives of workers in the parent company and those working in a subsidiary; this can inhibit the effectiveness of bilateral relations or the more effective working of the EWC machinery.
- A conflict between aims and objectives which are single-issue based and short term and those with more strategic or longer-term perspectives may compound problems.
- Finally, the absence of a competent coordinating body can inhibit the effectiveness of joint or cross-border cooperation.

Changes observed in the Irish national industrial relations system following the 2004/2007 enlargements

(a) Labour migration

As noted above, Ireland, in both jurisdictions, has a long history of seasonal, intermittent, temporary and permanent migration -- eastwards to the United Kingdom, and westwards (mostly permanent) to the United States and Canada (very significantly so in the post-Famine era, in the second half of the 19th century). There is also a long history of migration further overseas, to Australia, New Zealand, and, to a lesser extent, places like South Africa.

In the post-WW2 period and again in the 1980s, economic stagnation promoted a high degree of labour migration to the UK in particular, and for the first time, to Western Europe, particularly in the construction sector.

Since the economic resurgence in the 1990s and especially during the 'Celtic Tiger' era, labour flows reversed, in favour of inward migration. This trend was confirmed and reinforced after 2004 and again in 2007, with the significant enlargement of the EU following the accession of Baltic, CEE and Mediterranean

⁹ Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.

Member States. Currently, there is an identifiable increase in the numbers of people migrating from Bulgaria, Romania, and Macedonia.

(b) Changes observed in the Irish National IR system

It should be borne in mind that of the 15 Member States existing prior to the EU enlargements in 2004 and 2007, only three -- ROI, Sweden and the UK -- allowed access to their internal labour markets with little or no restriction. In the case of the ROI, there were no restrictions in a 'booming' economy, where employers were demanding a constant inflow of cheaper labour, especially from the CEE and Baltic States, and where many workers were also well-educated and skilled.

It is fair to say that at the time, some in the Irish trade union movement had concerns about accession in 2004 and 2007. The problem for those trade unions was that at that time, they had no assessment of what the likely level of inward migration would be, and what impact it would have on the labour market and on the terms and conditions of the existing workforce. Thus, many thought there should be a transition period of two years to iron out any problems.

Nevertheless, trade unions concentrated on growing membership, particularly in sectors such as services, hospitality, agribusiness, and construction. Targeted organising campaigns were undertaken by unions such as SIPTU, through their Strategic Organising Department (SOD), in sectors such as the mushroom industry, the red meat industry, security, cleaning, and construction.

As membership grew from the newer Member States in particular, as well as non-EU countries, the union began to recruit officials from those areas; currently, 25% of organisers in the SIPTU SOD are from CEE and Baltic Member States, or other Eastern European states¹⁰. In terms of social solidarity, SIPTU also incorporated a major new curriculum into its Basic English (Adult Literacy) Scheme, to cater for union members whose native language is not English, many of whom originally come from CEE and Baltic countries or Eastern Europe, generally.

One major area of concern was the level of labour inspection by the state to ensure the maintenance of statutory labour standards, at the time. In fact, as famously declared by one union official, there were more dog catchers in Ireland than government labour inspectors (only 37 in all)! The response was to establish the National Employment Rights Authority and triple the number of inspectors. Their functions have since been taken over by the Workplace Relations Commission (WRC), which provides information and services in a number

¹⁰ Unpublished SIPTU staff data of 2020.

¹¹ [Michael Halpenny](#)

of different languages to facilitate users from CEE countries and other EU and non-EU countries.

(c) Posting of workers

With regard to the posting of workers, this was a less-observed phenomenon at the time. The original Council Directive 96/71/EC was transposed into Irish law as a miscellaneous provision of the Protection of Employees (Part-Time Work) Act 2001 and the revised Directive 2014/67/EU by Statutory Instrument 412 of 2016, and is overseen by the Posted Workers Liaison Unit of the Workplace Relations Commission¹¹.

Trade unions were aware of the decisions of the then-ECJ in the cases of Viking, Laval, and Ruffert¹², and the ICTU participated in the formal EU social dialogue on the question of revision or replacement of the original directive.

(d) Cross-border relocation of production

Prior to 2004 and 2007, Ireland experienced the trend that was already evident elsewhere in more ‘developed’ economies, namely the loss of manufacturing and assembly, and their migration to other developing /low wage economies.

In 2005, there was a major dispute in marine transport which focussed on displacement and substitution of staff -- in this case, directly-employed, trade-union-organised officers and ratings in Irish Ferries. The company ‘reflagged’ vessels in Cyprus and replaced the existing Irish seafarers with a predominantly Latvian agency crew, largely on the Irish Minimum Wage. Apart from the major public support for striking Irish crews, the legal response was a new piece of legislation, the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act of 2007, to deal with and dissuade replacement and substitution on lesser terms and conditions¹³.

At a more positive level, Ireland has been a target for FDI as well as its beneficiary (as mentioned above), particularly in IT, finance, pharma, and medical devices. Among these are nine of the world’s top 10 medical technology

11 Directive 2014/67/EC transposed into the Irish Law by S.I. 412 of - European Union (Posting of Workers) Regulations 2016.

12 The cases dealt with issues arising from the posting of workers from Latvia to Sweden and from Poland to Germany: Case C- 341/05 *Laval un Partneri Ltd v Svenska Byggnadsarbetarforbundet & Ors*, ECJ 2007; Case 438/05 *International Transport Workers Federation & Anor v Viking Line ABP & Anor*, ECJ 2007; Case C-346/06 *Dirk Ruffert v Land Niedersachsen*, ECJ 2008.

13 Act No. 27 of 2007 - Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007.

companies (many from the US), eight of the top pharma/bio companies, and 10 of the top IT companies, including Google and Facebook, and three of the leading games companies. The pull factors here are as previously cited: taxation, membership in the EU and the Eurozone, a young, well-educated population with an average age of 34.4, and the English language¹⁴.

Relations between trade unions in Ireland and unions from CEE

Relationships between Irish trade unions and those from CEE take place at several levels and, where they do interface, relations are generally regarded as good.

(a) Bilateral

There are few instances of bilateral arrangements or agreements. One example from 2006 saw Ireland's largest trade union, SIPTU, sign a bilateral agreement with a leading Polish union, NSZZ Solidarnosc. This involved mutual recognition of membership and automatic representation by SIPTU for Solidarnosc members who came to Ireland. However, at the time of research, this appears to be the only such case.

(b) Through the national trade union centre ICTU

As well as promoting social dialogue, ICTU has been involved in a number of projects involving unions from CEE, for example:

Informia II. This was promoted by the Confederation of Independent Trade Unions in Bulgaria (CUTB), and involved a number of partner countries, including Croatia. The project was concerned with analysis of information and consultation at the workplace, and completed its work in June 2012;

Ino Tool. This is an ETUC-sponsored project involving eight trade union federations across the EU, including Hungary and Serbia, as well as four other 'Western' federations. The project is geared towards start-ups in the social economy and the Irish trade union centre, ICTU, which hosted the intermediate conference for the project in Dublin as part of the programme. Through its involvement, ICTU sought to develop trade union support for enterprises democratically controlled by membership¹⁵.

¹⁴ <https://connectireland.com/reasons.aspx>

¹⁵ <https://www.ictu.ie/projects>

¹³ [Michael Halpenny](#)

(c) Through the ETUC

The Irish Congress of Trade Unions sits on the executive board of the ETUC and plays an active role in the work of the organisation and well as on the various sectoral committees. Because of that, there is a positive view of the ETUC as well as a mature appreciation of the challenges of an organisation of (circa 90) national trade union confederation affiliates. It is viewed as generally credible and effective on macro issues and an agent for the promotion of solidarity among affiliates, providing an important formal avenue to promote such solidarity.

In the course of Irish trade union involvement with ETUC, there is work with CE unions and, as reflected elsewhere in this paper, there is an appreciation of the challenges faced by them. This is particularly so, because Ireland is a small independent country (with a long history of colonial oppression, its struggle for independence, and mass emigration) while also remaining supportive of the European Project -- albeit hanging onto the last vestiges of 'Social Europe'. Thus, Irish people, and the trade union movement in particular, have a strong sense of social solidarity and global responsibility.

(d) Through the European and International sectoral organisations

More intensive interaction takes place through the 10 sectoral federations at the European level, such as EFFAT, EPSU, EFBWW and ETF, and this is more typically the interface between Irish trade unions and their counterparts in CEE Member States. Irish unions such as SIPTU have been active affiliates and participants on the executives of ETF (including this writer) and EFFAT, as are public service unions such as FORSA (previously IMPACT and others) on that of EPSU, with FORSA/IMPACT hosting the EPSU Congress in Dublin in 2019.

Similarly, there is a high level of interaction among international sectoral organisations, such as ITF, IUF, and UNI Global.

Through such involvement, Irish unions report interaction with colleagues from CEE countries as well as awareness of the very good work done in partnership, for example, between Nordic unions and those from the Baltic republics.

(e) At the level of the firm or enterprise through European Works Councils (EWCs)

Until recently, a problem existed in the initial transposition of the EWC Directive into domestic law in Ireland: it did not provide for the processing of complaints via the Workplace Relations Commission and the Labour Court. That

issue has since been resolved and the first referral to the WRC will shortly be heard.

In general, the area of EWCs has seen less development in the ROI than in other Member States. Nevertheless, a number of EWCs registered in the UK have recently sought to transfer their registration to the ROI because of Brexit.

There is now a renewed focus on the possibilities offered by engagement in EWCs' (and Ireland's) largest union, SIPTU. Recently, in 2016, it appointed an experienced front-line official to take responsibility for EWCs. Not only has this initiative raised the level of expertise, but it has also delivered continuity and consistency to the development of EWC engagement. Apart from the benefits gained through prioritising EWC involvement institutionally, in the work of the union and its organising mandate in particular, the initiative has seen results in the threefold increase in the numbers of EWC SIPTU representatives.

The union advises that it is now engaged in an audit of all EWCs where there is a SIPTU interface, and the bodies are seen as channels of information and agents of cross-border solidarity, as well as potentially powerful organising tools. Examples are given of significant gains where resources and time are concentrated on possibilities presented by the EWC framework for social dialogue. Others reporting a targeted focus on EWCs include Mandate, organising the retail sector.

There is a loud and clear message: in order for any success to be gained from EWC engagement, it has to be properly integrated and resourced within the structure and work of the union. Moreover, all opportunities, limited though they might appear to some, have to be explored, and where appropriate, should be exploited to the benefit of actual and potential membership, in order to build capacity. In short, work is required, and results won't come served up on a plate.

Dominant perceptions (opinions) of Irish trade unions on the European Social Dialogue, TCAs, and the European Minimum Wage in the context of European Social Dialogue, including trade unions from the East

(a) European Social Dialogue

Despite a certain degree of Euroscepticism among individual activists and officials of some unions, which became evident during the Lisbon debate, Irish unions are generally very positive for the most part towards European Social Dialogue (ESD). It is equally fair to say that as a whole, they may not have had the same focussed participation in ESD as other national movements, thus there is not as much structured engagement between Irish and CEE unions to report upon. Liam Berney, Assistant General Secretary of ICTU, offered the view that part of the reason might be a knowledge gap among some unions and their activists about the quantum and quality of work that goes on within the ESD process.

Ger Gibbons, Policy Adviser, ICTU, pointed to the 2019 and 2020 country reports by the EU Commission on Ireland, where it was critical of the weakness of social dialogue (nationally), and mentioned the need for further improvement in collective bargaining, *implicitly* recommending improvement on both fronts.

The 2019 report (February 2019) stated:

‘Social dialogue is characterised by its mostly consultative nature. In 2015 the government created a structured forum for national economic dialogue where social partners have the opportunity to raise concerns and share views ahead of the annual budget on key policy issues. However, they are rarely involved and consulted in relation to the European Semester process by the government’.¹⁶

Further, the 2020 report (February 2020) stated:

‘Measures have been taken to improve social dialogue, but there is still scope for greater involvement. Social partners’ role and participation in collective bargaining has improved recently, following a controversial period during the crisis (Eurofound, 2019). However, the renewed promotion of Social Partnership still appears to be weak, with consultations

¹⁶ February 2019 European Semester Country Report on Ireland (COM (2019) 150 final), p. 37.

restricted to a narrow range of topics, mainly around pay and terms of employment. Discussions on the annual budget plan are supported by the structured forum for economic dialogue created in 2015.¹⁷

Gibbons goes on to note that the Commission's December 2019 draft recommendation on the economic policy of the euro area (COM (2019) 652 final)¹⁸ has **now called on all euro area Member States, both collectively and individually, to 'enhance the effectiveness of social dialogue and promote collective bargaining'**. This is arguably the first time it has made such an explicit recommendation on collective bargaining.

In their response to the 2020 country report, ICTU strongly urged the Commission to include a similar, explicit recommendation on collective bargaining in its 2020/21 country-specific recommendations to Ireland, due in May.

Finally, under this heading, another seasoned participant in ESD, Gerry McCormack, Deputy General Secretary of Ireland's largest union (SIPTU), confirmed the positive nature of the process and its outcomes, but identified the problem as lying more at the national level and in the absence of developed social partnership (largely abandoned by the Irish State in 2011; see above), when it comes to transposition and implementation.

(b) Transnational Company Agreements (TCAs)

The TCAs are regarded as those that essentially form standards, such as employee representation and collective bargaining, rather than establishing detailed prescriptions of terms and conditions. Nevertheless, they are regarded as useful organising tools, and examples were provided in the retail sector by the Mandate trade union, when dealing with MNCs such as IKEA, H&M and Inditex (Zara).

(c) European Minimum Wage

The overall view is very much in favour of a Framework Directive on collective bargaining (CB), and supports the majority position within the ETUC. There is also a clear appreciation of the importance of the proposal of a European Minimum Wage to trade union colleagues in CEE MSs, and elsewhere within the EU. However, there has existed a view (quite supportive of the concerns of CEE colleagues) that they should not perhaps put all their eggs into the European

¹⁷ February 2020 European Semester Country Report on Ireland (COM (2020) 150 final), p. 42.

¹⁸ https://ec.europa.eu/info/sites/info/files/2020-european-semester-euro-area-recommendation_en.pdf

¹⁷ [Michael Halpenny](#)

Minimum Wage basket, so to speak, and that they should look into other ways to advance the interests of their members within the ETUC and the CEE area. The Nordic position is acknowledged and understood, but there is also a desire to find a mechanism for satisfying and convincing them that there is no negative impact on their systems.

Irish unions support the proposals on CB because of the fact that there is currently no legally-enforceable right to CB in the ROI (although there is a legal mechanism in NI based on UK legislation for mandatory union recognition by employers). So, for unions in the ROI, CB is the ‘big ticket’ item, as SIPTU Deputy General Secretary Gerry McCormack described it. Further, a report of the ICTU on the reform of collective bargaining, ‘The Route to Reform’¹⁹, cites criticisms by the EU Commission in a recent Country Report on Ireland concerning the relative weakness of social dialogue and collective bargaining, and of the need for improvement (see above), in turn echoing the stated political priorities of the von der Leyen Presidency²⁰. Some pointed to the overall need to cast the broad debate as being one about the ‘employees’ voice’, and instanced the work of the Scottish TUC in the ‘Fair Work Convention’, identifying basic standards of fair employment²¹.

The ROI has one of the higher national minimum wages (NMW) in the EU, and given that union-organised employments operate above the floor of the NMW (with few exceptions), it is therefore not the major consideration for them. Moreover, some recognise that there are those in Europe who see the objective as being more realistically a ‘floor’ of basic standards at the EU level, rather than an established figure.

What is of concern in the Irish labour market is that the NMW provides a floor for employees and employers alike, particularly in the private sector, ensuring a brake on unfettered and unfair ‘competitive’ practices by the worst employers. It has also been a point of reference in pursuing complaints, for example, on ‘on-call’ hours, following on the ‘German Doctors’ judgement of the then-ECJ²².

19 ‘A Union that strives for more. My agenda for Europe: political guidelines for the next European Commission 2019-2024, Directorate General for Communication (European Commission), 09.10.2019, p. 9, Europe’s social pillar.

20 ‘Dialogue and Collective Bargaining in Ireland. Route to Reform’ ICTU 2019.

21 Scottish Trades Union Congress (STUC) Fair Work Framework 2016.

22 Case C-151/02 *Landeshauptstadt v Kiehl v Norbert Jaeger*, ECJ 2003.

(d) Generally

As stated above, there is a positive view among Irish trade unionists interviewed towards trade unions in CEE countries. There is also acknowledgement of the difficulties posed to them by generally low to very low union density, in quite a few CEE MSs (borne out by the figures cited in the comparative report, and elsewhere in the national reports, Slovenia excepted). However, there are also concerns that CEE unions should not see themselves in a negative light because of perceptions by some (expressed elsewhere) that they are either ‘victims’ or ‘a threat’. Instead, there is belief among some interviewed that they should try and develop a stronger and more unified voice.

It would be important for CEE unions to collectively assess whether they are populating both the higher levels and the middle levels of ETUC in its Vocational Committees to the fullest extent possible, thereby furthering the objective of ensuring that their voices can be heard to their maximum potential.

Two questions raised subsequent to the original template

(a) Challenges posed by Brexit on the Island of Ireland to cross-border trade union cooperation.

As described above, the ROI is a sovereign independent state and remains a MS of the EU. NI is termed a devolved region of the UK, and despite the fact that the majority in the Brexit Referendum was in favour of Remain (like Scotland, another UK region with devolved powers), it is nevertheless forced to leave the EU along with England and Wales, who voted in favour of leaving. Beyond previously-shared EU membership, there is a Common Travel Area between the UK and ROI which pre-dates EU membership. Also, at the time of writing, the final deal between the UK and the EU has not been concluded, so it is difficult to define the overall impact on the island of Ireland, most notably on the question of a ‘hard border’, which impacts trade and economic life, as well as the working lives of many cross-border workers in both jurisdictions -- the ROI and NI.

Most importantly from the standpoint of the question posed, there is a common trade union centre, namely the ICTU. And this is emphasised when discussing what the future might hold for the trade union movement on the island. All underscore the fact that the body has been in existence since 1959, on the amalgamation of two previous bodies, one founded in 1894. They note that despite the fact that the majority of unions in NI are headquartered in the UK or

in Belfast, the all-Ireland trade union centre survived over 30 years of ‘the Troubles’ and spoke with one voice in the Brexit debate, regardless of the political stresses -- not just in the UK, but in NI. Consequently, many are of the view that it is unlikely to break over the implementation of Brexit.

Indeed, a view was expressed that ICTU could be strengthened in a post-Brexit Ireland, simply because it is a single worker organisation on the island, enhancing cooperation between unions on the island and in the UK. Further, in the wake of Brexit, it seems that there is greater engagement between the trade union centres in Ireland and the devolved regions of the UK: Scotland (STUC), Wales (WTUC) along with the TUC.

At this stage, let us add a note of caution concerning the constitutional question: the 1998 Good Friday Agreement provides for a ‘border poll’ to decide the question of a ‘United Ireland’. Given that politics in NI is still largely marked out between those who support the union with the UK and those who do not, and despite the evidence that tectonic plates are noticeably shifting to discussion of what a United Ireland might look like, much depends on how ICTU handles it across its membership in NI.

Finally, while the UK Prime Minister has set his face against any harmonisation of the UK Labour Market with the EU, it is important to remember that in NI, employment affairs is a devolved power of the Stormont Assembly and Executive (regional parliament). However, if divergence were to arise between existing EU social standards in the UK and the ROI, Stormont has the competence to address any gap arising by mirroring any improvement. Indeed, all NI political parties, with the exception of the strongly pro-unionist and pro-Brexit Democratic Unionist Party (DUP), have already declared support for such an approach.

(b) The question of an ETUC trade union card

An interesting question has been posed as to the feasibility of an ETUC or ETUF union card, entitling its bearer to assistance by a relevant trade union in a ‘host’ country where they have gone to work.

During general discussion, a number of issues concerning the card have been raised:

- The application of any such card/entitlement could only feasibly be for a short/limited/‘emergency’ period; inevitably, trade unions in the ‘host’ country would understandably require the bearer to take up membership in the relevant trade union in that country. (Indeed, at the time of

writing this report, migrant workers in the Irish meat processing industry have been very effectively represented on COVID-19 problems by major Irish trade unions such as SIPTU, by the ICTU and also by smaller unions such as the IWU, as well as by the Migrant Rights Centre Ireland.)

- An imbalance in the usage of such a card might also be anticipated, with more users coming from less developed regions of the EU and travelling for work in more economically developed regions/MSs.
- A related question concerns resources for servicing and representation. This has a financial cost, and unions in ‘host’ countries, when called upon to assist bearers of an ETUC or an ETUF card, would inevitably merit reimbursement in some form from the union of origin, the ETUC, or the particular federation. Thus, there would need to be a central fund within the ETUC/ETUF, contributed to by affiliates, and from which reimbursement claims could be met.
- Both the union of origin and the union in the ‘host’ country, through their national trade union centre, or otherwise, would be required to be affiliates of the ETUC and/or the ETUF in question, which would be taken as read.
- Finally, if such practical organisational details were to be overcome and there was buy-in, it could be an aid to organising.

Challenges facing the ETUC in the context of the conclusions of the comparative report

The main challenges facing the ETUC are as follows:

(a) There is the obvious institutional challenge to secure agreement on an EMW and a Framework Directive on CB, in an organisation with such a diverse affiliate membership. Part of that involves reaching a common understanding of what the comparative report describes as the ‘operationalising’ of the concept, in terms of the objective.

(b) Critical to the aforementioned process is persuading unions from more developed IR systems (e.g., Nordic affiliates) that common minimum standards across the EU need not undermine existing systems and protections in their countries.

(c) Beyond that, there is the need to encourage and accommodate a stronger and more unified voice for CEE affiliates, particularly at the middle as well as the senior levels, in the committees of ETUC and in the federations.

(d) To recognise the key role of the ETUI, and work with it to identify and resolve practical barriers to enhanced involvement of CEE affiliates, such as language issues -- first, in the skill sets of CEE delegates, and secondly, in facilitating fuller participation in meetings and conferences.

(e) To encourage and facilitate greater, more targeted and focused participation by CEE affiliates in existing social dialogue machinery, such as EWCs, as a route to organising and capacity building. At the same time, there needs to be a more realistic assessment of the benefits and limits of EWCs. Within their limitations, like all frameworks, they are what you make them.

(f) To encourage and facilitate more focussed cooperation between CEE affiliates and those from the 'West', in mutually beneficial cross-border campaigns, initiatives, and joint projects, with a view to organising and capacity-building among all partners. In other words, it is necessary to identify campaigns and projects which benefit both partners, while promoting the relevance of the ETUC, in general.

(g) The limitations of the capacity of the ETUC to do all that is expected of it by various sides must be borne in mind. It is a European Confederation and not a panacea for all ills, nor merely the preserve of the big players. However, it only works if everyone is involved to maximum capacity to ensure their voice is heard, regardless of whether they come from the 'West' or the 'East'.

(h) With regard to ESD and EPSR, given that the von der Leyen Presidency has expressly made a political commitment to them, there should be a pathway in the ETUC to encourage and allow the CEE affiliates to articulate their own priorities to the ETUC and beyond.

(i) Concerning the perceived 'conflict' in the priorities of 'Western' unions as opposed to those in CEE, there need not be dissonance between a strong trade union position on climate change, for example, and a focus on basic terms and conditions. The whole point about the climate challenge or a 'European Green Deal', from a trade union point of view, is that the debate and the objectives are framed with the concept of 'Just Transition', to ensure that work, wages, and conditions are not degraded, or that the burden does not fall on working people.

Suggestions and recommendations for the trade union movement as to how to solve the key problems identified in the comparative report

Most of what can be said on this matter is in accordance with point 7, above.

However, CEE trade unions could usefully commit to a four-year programme, to pursue a strategy for achieving a number of objectives, which could enhance their voice within the ETUC and advance progress for them on issues such as collective bargaining -- not just in the context of the current debate, but generally.

A four-year programme can deliver focus much better than a longer period, allowing for sufficient monitoring and measurement of progress. A shorter period of say, two years, provides much less scope for identifying sufficient achievable targets (and importantly, building internal cohesion among those participating), as well as the machinery to carry the project through.

A four-year time span (albeit with some overhang) falls within the duration and ambit of the ETUC Action Programme 2019-2023, Chapter 3 of which commits, *inter alia*, to campaigning for advances in collective bargaining and wage policy²³. As I understand it, it also falls broadly within the electoral cycle of the ETUC leadership.

Possible target objectives could be as follows:

- Audit the involvement of CEE unions in ETUC and identify areas where they could realistically work towards enhancing representation and developing a stronger, more unified voice within the organisation. This necessarily involves a degree of information-sharing and alliance-building, both internally and externally.
- Identify and articulate any barriers to enhanced involvement, such as language issues, and actively promote solutions to answer the concerns raised in at least one country report, about the difficulties of participation in meetings where there are less-than-optimal translation facilities for CEE delegates. An alternative is to seek enhanced support and funding from ETUC/ETUI for improving language skills for delegates in more widely-spoken languages. (This may appear to be common sense to

23 ETUC Action Plan 2019-23 (2019) Chapter 3: Fighting for higher wages, stronger collective bargaining and enforcing rights for all, pp. 27-43.

²³ [Michael Halpenny](#)

some, but coming from ten years' experience in the field of trade union language skills programmes, there are few greater barriers to participation in democracy for workers than language!) In order to assist the ETUC with addressing this problem, as stated in point 7(d) above, CEE unions are going to have to spell out the dimensions of the problem and itemise their desired solutions.

- Identify/audit EWCs in their own countries (using the knowledge resources of Eurofound), where there is a reasonable prospect of achieving progress, building capacity and cross-border alliances through them, and resourcing to do so.
- While grounding their work in the ETUC Action Programme, CEE unions need to influence the EU at a policy level, collectively or individually, to put pressure on their own governments in the area of collective bargaining. Reference has already been made in point 5(a) above, concerning the political priorities of the von der Leyen Presidency, and to the EU Commission's December 2019 Draft Recommendation on economic policy, in which the EU called upon all MSs (collectively and individually) to 'enhance the effectiveness of social dialogue and promote collective bargaining'. If they have not already done so, national trade union centres in CEE countries should, similarly to the ICTU, call upon the EU Commission to make similar, explicit recommendations in their country reports to the respective CEE MSs for 2020/2021 and, failing that, for 2021/2022.

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