

Information supplied by governments on the application of ratified Conventions

Ireland

Convention No. 98

Ireland

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Ireland (ratification: 1955). The Government has provided the following written information.

We refer to previous detailed reports from Ireland on this Convention. There has been no significant change in the implementation of the Convention since the previous report was submitted in 2011. The Government, however, outlines recent developments and progress with the enactment of the Industrial Relations (Amendment) Act 2015, which came into effect on 1st August 2015 (<http://www.irishstatutebook.ie/eli/2015/act/27/enacted/en/pdf>).

Enactment marked the fulfilment of the commitment in the Programme for Government to reform the current law on employees' right to engage in collective bargaining in order to ensure compliance by the State with recent judgments of the European Court of Human Rights.

The legislation provides a clear and balanced mechanism by which the fairness of the employment conditions of workers in their totality can be assessed in employments where collective bargaining does not take place and will bring clarity and certainty for employers in terms of managing their workplaces in this respect. It also explicitly prohibits the use of inducements by employers to persuade employees to forgo collective bargaining representation and will provide strong protections for workers who invoke the provisions of the 2001/2004 Industrial Relations Acts or who have acted as a witness or a comparator for the purposes of those Acts.

Enactment of the legislation follows a lengthy consultation process involving extensive engagement with stakeholders with a view to putting in place an effective and practical solution to all concerned. The legislation ensures the retention of Ireland's voluntary system of industrial relations, but it also means that where an employer chooses not to engage in collective bargaining either with a trade union or an internal "excepted body", and where the number of employees on whose behalf the matter is being pursued is not insignificant, the 2001 Act was remediated to ensure that an effective framework exists which allows a trade union to have the remuneration and terms and conditions of its members in that employment assessed against relevant comparators and determined by the Labour Court, if necessary.

It ensures that where an employer is engaged in collective bargaining with an internal “excepted body”, as opposed to a trade union, that body must satisfy the Labour Court as to its independence of the employer.

Specifically, the legislation includes:

- a definition of what constitutes “collective bargaining”;
- provisions to help the Labour Court identify if internal bargaining bodies are genuinely independent of their employer and not under their domination or control;
- bringing clarity to the requirements to be met by a trade union advancing a claim under the Act;
- setting out the policies and principles for the Labour Court to follow when assessing those workers’ terms and conditions, including the sustainability of the employers business in the long-term;
- new provisions to ensure cases dealt with are ones where the numbers of workers are not insignificant;
- provisions to ensure remuneration, terms and conditions are looked at in their totality,
- provisions to ensure that there is some management of the permitted frequency of reassessment of the same issues;
- enhanced protection by way of interim relief in the case of dismissal for workers who may feel that they are being victimized for exercising their rights under the proposed legislation.

An explicit prohibition on the use by employers of inducements (financial or otherwise) designed specifically to have staff forgo collective representation by a trade union was introduced with the adoption of a statutory Code of Practice on Victimisation on 28 October 2015.

In relation to the competition issue referred to by the Committee, under both European Union (EU) and Irish competition legislation, self-employed persons are regarded as “undertakings”. There is ample evidence of EU case law at the European Court of Justice which has determined that such workers are regarded as undertakings from an EU competition law angle.

Section 4 of the (Irish) Competition Act 2002 prohibits and makes void all agreements between undertakings, decisions by bodies representing undertakings and concerted practices which have, as their object or effect, the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State. This reflects the provisions of Article 101 of the Treaty on the Functioning of the EU (TFEU) (previously EC Treaty Article 81), which contains a similar prohibition in relation to agreements, decisions and concerted practices, which may affect trade between Member States.

The current situation is that representative bodies and self-employed persons acting collectively cannot decide on the fees for services provided by them nor can they collectively agree a price between themselves for their services, as this is regarded as price fixing contrary to the Competition Act 2002. Competition law does not prohibit consultation with undertakings (or their representatives) as long as the power to ultimately set the price does not lie with that collective group.

Under EU law, a worker, within the meaning of Article 45 TFEU (ex Article 39 TEC) is a person who, for a certain period of time, performs services for and under the direction of another person, in return for which he or she receives remuneration and such a person is not an undertaking. However, the formal classification under national law of a person as “self-employed” does not exclude the possibility that the person is a worker within the meaning of Article 45 TFEU. Accordingly a person will not be considered to be an undertaking for the purposes of EU competition law where the nature of his or her work is such that he or she becomes incorporated into the undertakings for which he or she is engaged to provide services thus forming an economic unit with those undertakings. In this context, the right of employees to be represented by trade unions is not disputed.

Under the “Towards 2016” agreement, the (then) Government agreed to the following:

9.6. The Government is committed to introducing amending legislation in 2009 to exclude voice-over actors, freelance journalists and session musicians, being categories of workers formerly or currently covered by collective agreements, when engaging in collective bargaining, from the provisions of Section 4 of the Competition Act, 2002, taking into account, inter alia, that there would be negligible negative impacts on the economy or on the level of competition, and having regard to the specific attributes and nature of the work involved subject to consistency with EU competition rules.

Since that commitment was entered into, the EU/IMF Programme of Financial Support for Ireland was agreed. The Memo of Understanding under the EU/IMF Programme of Financial Support for Ireland committed Irish authorities to:

Ensure that no further exemptions to the competition law framework will be granted unless they are entirely consistent with the goals of the EU/IMF Programme and the needs of the economy.

No such exemptions were granted. There are no plans to introduce such exemptions, especially in light of the post-programme surveillance process that is currently in place.

Following on from the CJEU *Dutch Musicians* judgment, December 2014 in *FNV Kunsten Informatie en Media v Netherlands*, the Competition and Consumer Protection Commission was asked if, in light of the judgment, the Commission needed to revise Decision (No. E/04022): Restriction on the Right of Self Employed Workers to Collectively Bargain Through a Trade Union, dated 31 August 2004. The Commission concluded, having fully considered the matter, that the Authority’s analysis and conclusion of the Decision (No. E/04022) remained consistent with Irish competition law as interpreted in the light of the relevant principles of the EU competition law set out by the CJEU in its *Dutch Musicians* judgment.

Department of Jobs, Enterprise & Innovation