PhD Submission

Thesis title	**Does Voluntarism Still Exist? A Study on the Role of the State in the Voluntarist Industrial Relations System in Ireland**
Name	Katharina Sophia Zimmer
Current qualifications	First Legal State Examination, Free University of Berlin, Berlin, Germany M.Sc. Human Resource Management, Dublin City University, DCU Business School, Dublin, Ireland
Award for which the work is submitted	PhD
Name of University and School	Dublin City University, DCU Business School
Supervisor	First supervisor: Dr Eugene Hickland Second supervisor: Dr Aurora Trif
Month and Year of Submission	December 2025

DOES VOLUNTARISM STILL EXIST? A STUDY ON THE ROLE OF THE STATE IN THE VOLUNTARIST INDUSTRIAL RELATIONS SYSTEM IN IRELAND

Katharina Sophia Zimmer

A dissertation submitted in partial fulfilment of the requirements of the degree of

Doctor of Philosophy

to

DCU Business School
Dublin City University
Supervisor: Dr Eugene Hickland

Declaration

I hereby certify that this material, which I now submit for assessment on the programme of study leading to the award of the Doctor of Philosophy (PhD) is entirely my own work, and that I have exercised reasonable care to ensure that the work is original and have conformed to the regulations on the use and declaration of Generative AI, and does not to the best of my knowledge breach any law of copyright, and has not been taken from the work of others save and to the extent that such work has been cited and acknowledged within the text of my work.

I hereby certify that no Generative Artificial Intelligence (Gen AI) tools have been used in the creation of the thesis.

Signed: Katharina Sophia Zimmer

ID No.: 16210061

Date: 16 December 2025

List of Publications & Presentations

Research was presented at the following conferences:

ILPC Conference 2021

39th International Labour Process Conference, held from April 12-14, 2021, with the theme "Security in Work? The workplace after COVID-19".

BUIRA Conference 2021

Annual conference hosted by the British Universities Industrial Relations Association, held from July 13-15, 2021, with the theme "The past, present and future of industrial relations and the politics of work".

ILPC Conference 2024

42nd International Labour Process Conference (ILPC 2024), held from April 3-5, 2024, with the theme "Coercion, Consent and Conflict in the Labour Process and Beyond".

SASE Conference 2024

Annual conference of the Society for the Advancement of Socio-Economics, held from June 27-29, 2024, with the theme "For Dignified and Sustainable Economic Lives: Disrupting the Emotions, Politics, and Technologies of Neoliberalism".

Table of Contents

Title page ..... *i*
Declaration ..... *ii*
List of Publications & Presentations ..... *iii*
Table of Contents ..... *iv*
List of Abbreviations ..... *xi*
List of Tables ..... *xii*
List of Figures ..... *xii*
Abstract ..... *xiii*
Acknowledgements ..... *xiv*

CHAPTER 1: INTRODUCTION **1**

1. Introduction **1**
2. Statement of the Problem **2**
3. Significance and Contribution of this Study **3**
4. Outline of this Study **4**

CHAPTER 2: LITERATURE REVIEW **6**

PART 1: VOLUNTARISM AND THE BALANCE OF POWER IN INDUSTRIAL RELATIONS **7**

1. The Traditional Concept of Voluntarism **7**
1.1 Definitions of Voluntarism 7
1.2 The Origins of Voluntarism 10
2. The Concept of Balance of Power in Industrial Relations **12**
3. Conclusion **14**

PART 2: THE ROLE OF LAW IN INDUSTRIAL RELATIONS **15**

1. The Role of Law in Industrial Relations **15**
1.1 The Purpose of Law in the Labour Market 15
1.2 Theoretical Approach: Labour Constitution Theory 16
1.3 The State Making Law 17
1.3.1 The Role of the Legislature 17
1.3.2 The Role of the Judiciary 17
1.3.2.1 The Nature of the Judiciary 18
1.3.2.2 The Courts Creating Law 18
1.3.2.3 Judges' Subjectivity 19
1.4 The Role of the Constitution 20
2. The Concept of Procedural Justice **20**
3. Conclusion **22**

PART 3: COLLECTIVE BARGAINING IN IRISH VOLUNTARISM **24**

1. Definition of Collective Bargaining in Irish Voluntarism **24**
1.1 The Definition of Collective Bargaining 24
1.2 The Purpose of Collective Bargaining 24
1.3 Collective Bargaining and Pluralism 25
2. The Collective Bargaining Parties in Ireland **26**
2.1 Trade Union and Employer Approaches to Collective Bargaining 26
2.1.1 Union Approach 26
2.1.2 Employer Approach 27
2.2 The Role of the State: Legislature and Judiciary 27
2.2.1 Legislature 28
2.2.2 Judiciary 28
2.2.3 The Labour Court: 'The Heart of Voluntarism' 30
2.3 The Irish Constitution 31
3. Recent Developments Influencing Collective Bargaining in Ireland **32**
3.1 Developments at EU Level 32
3.2 National Level 33
3.2.1 The Imbalance of Power: A Challenge to the Traditional Concept of Voluntarism 33
3.2.2 The New 'Social Dialogue' 37
3.2.3 Collective Labour Law: The Industrial Relations (Amendment) Act 2015 37
3.2.4 Collective Bargaining at Sectoral Level 38
3.2.5 The Final Report of the LEEF High Level Working Group on Collective Bargaining 39
4. Union Recognition and the Constitution **41**
4.1 Voluntarism and Union Recognition 41
4.2 Relevance to the Balance of Power 42
4.3 The Constitutional Right to 'Freedom of Association' 42
4.4 The Controversy on Union Recognition 42
5. Conclusion **43**

PART 4: CONCLUSION, EVALUATION FRAMEWORK AND RESEARCH QUESTIONS **45**

CHAPTER 3: RESEARCH METHODS **48**

PART 1: SIGNIFICANCE OF THE TOPIC **49**

PART 2: RESEARCH METHODS **50**

1. Research Methods **50**
1.1 The Researcher's Personal Approach 50
1.2 The Abductive Approach 51
2. Research Philosophy **52**
2.1 Reality is Subjective 52
2.2 Legal Analysis as a 'Special Case' 53
2.3 The Joining of Different Philosophical Approaches 54

PART 3: DATA COLLECTION **56**

1. Collection of Primary Data **56**
1.1 Approach to Conducting Interviews 56

1.2 Developing the Interview Question Set 58
1.3 Conducting the Interviews 58
2. Collection of Secondary Data 59

PART 4: DATA ANALYSIS 60

1. Thematic Analysis 60
1.1 Analysing Primary Data 60
1.2 Analysing Secondary Data 61

PART 5: RELIABILITY AND VALIDITY 62

1. Reliability and Validity 62
2. Collecting the Data 63
3. Analysing the Data 63
4. Limitations 64

CHAPTER 4: THE DATA AND ITS EVALUATION 65

PART 1: CHALLENGES TO THE BALANCE OF POWER IN IRISH VOLUNTARISM 67

1. Introduction 67
2. Challenges to the Balance of Power in the Trade Unions' Sphere 67
2.1 Decrease in Union Bargaining Power 67
2.1.1 Shift in the Balance of Power 67
2.1.2 Less Unionisation 69
2.1.3 Increasing Individualism and Weakening Collectivism in Society 70
2.2 A Challenge to the Concept of Voluntarism 70
3. Challenges to the Balance of Power in the Employers' Sphere 71
3.1 Employers' Mindset 71
3.1.1 General Mindset 71
3.1.2 Multinational Companies 72
3.2 Lack of Employer Engagement in Industrial Relations Processes 72
3.2.1 General Lack of Engagement – A Problem for Voluntarism 73
3.2.2 Lack of Engagement in JLCs 73
3.3 Employers' Legal Activism 74
3.3.1 Growing Legal Activism 74
3.3.2 The Labour Court Respected as the 'Heart of Voluntarism'? 75
3.3.3 Anonymity at the Court: A 'Double-Edged Sword' 77
4. Conclusion 77

PART 2: REBALANCING POWER IN THE SPHERE OF VOLUNTARISM 79

1. Introduction 79
2. Collapse of Social Partnership – Is the New 'Social Dialogue' Equivalent? 79
3. The Power of Persuasion and Industrial Action 83
4. Promoting the Value of Collectivism 84
4.1 The Need Is Out There 84
4.2 Defining Value and 'Having Something More in Place' 85
4.3 A 'Delicate Balance for the State' 86

5. Communication Is Key 87
5.1 Adapting to New Ways of Communication 87
5.2 Explaining What a Union Does 88
5.3 The Issue of Access to Communication 88
6. Training and Professionalisation 88
6.1 Negotiating the 'Bigger Picture' 89
6.2 Increasing Legal Capacities and Legal Strategy 90
7. Access to Information 91
8. Building Networks between Unions at the European Level 91
9. Evaluation 94

PART 3: REBALANCING POWER IN THE SPHERE OF STATE LEGAL INTERVENTION 98

1. Introduction 98
2. Individual Labour Law as a Means of Rebalancing Power 98
2.1 Reported Data 98
2.2 Evaluation of the Role of Individual Labour Law 101
3. Collective Labour Law as a Means of Rebalancing Power 102
3.1 The Industrial Relations Acts 1946 and 1969: Establishment of the Labour Court 102
3.1.1 Purpose of the Industrial Relations Acts 1946 and 1969 102
3.1.2 Evaluation of the Industrial Relations Acts 1946 and 1969 103
3.2 The Industrial Relations Act 1990 103
3.2.1 Purpose of the Industrial Relations Act 1990 103
3.2.2 Evaluation of the Industrial Relations Act 1990 104
3.3 The Industrial Relations Acts 2001–2004 105
3.3.1 Purpose of the Industrial Relations Acts 2001–2004 105
3.3.2 Evaluation of the Industrial Relations Acts 2001–2004 108
3.4 The *Ryanair* Case 110
3.4.1 The Case 110
3.4.2 Significance of the Case 111
3.5 The Industrial Relations (Amendment) Act 2015 113
3.5.1 Purpose of the Industrial Relations (Amendment) Act 2015 113
3.5.2 Use of the Industrial Relations (Amendment) Act 2015 117
3.5.3 Evaluation of the Industrial Relations (Amendment) Act 2015 118
3.5.4 The *NECI* Case 120
3.5.4.1 The Case 120
3.5.4.2 Significance of the Case 122
3.6 Conclusion 124
4. The EU Minimum Wage Directive 124
4.1 Purpose of the EU Minimum Wage Directive 124
4.2 Is the EU Minimum Wage Directive a 'Game Changer'? 126
4.3 Evaluation of the EU Minimum Wage Directive 128
5. Future Ideas: Make Employer Participation Mandatory 129
5.1 Make Employer Participation Mandatory at Sectoral Level 129
5.1.1 Make Employer Engagement Mandatory – Enabler of or Contradiction with regard to Voluntarism? 130
5.1.2 JLCs Compared with *Free* Collective Bargaining 133
5.2 Foster Employer Participation at Company Level 133
5.2.1 The Core Idea behind 'Good Faith Engagement' 134
5.2.2 Constitutional Obstacles? 136

5.3 Evaluation of the Issue of Making Employer Engagement Mandatory 138
6. Conclusion **140**

PART 4: CONSTITUTIONAL TRADE UNION RECOGNITION **141**

1. Introduction **141**
2. Interpretation of Article 40.6.1(iii)° of the Irish Constitution **141**
2.1 Opinion: Union Recognition Is Not Inherent in the Constitution 141
2.2 Opinion: Union Recognition Is Inherent in the Constitution 143
2.3 National Jurisdiction Concerning Constitutional Union Recognition 143
2.4 Freedom of Association in International and European Norms 145
2.5 Evaluation of the Existence of Constitutional Union Recognition 150
2.5.1 Evaluation of International Implications 150
2.5.2 Evaluation of European Implications 151
2.5.3 Evaluation of National Implications 152
2.5.4 The Right to Disassociate 153
2.5.5 Conclusion 154
3. Company Access and Protection against Discrimination **155**
3.1 Company Access 155
3.2 Protection from Discrimination 157
3.3 Evaluation of Access and Protection 159
4. Is There a Need for Constitutional Change? **161**
4.1 Opinions in Favour of a Need for a Constitutional Change 161
4.2 Opinions Against a Need for a Constitutional Change 162
4.3 Evaluation of the Need for a Constitutional Change 162
5. Alternatives to Union Recognition? **162**
5.1 Collective Bargaining – 'Practice vs Theory' 163
5.2 Direct Engagement Models 165
5.3 The EU Minimum Wage Directive 165
5.4 Statutory Rights 165
5.5 Discussion of Potential Alternatives to Union Recognition 166
6. Fears and Potential Obstacles **167**
6.1 Bad Experiences in the United Kingdom and the United States 167
6.2 Constitutional Union Recognition – A Threat to Foreign Direct Investment? 168
6.3 Evaluation of Fears and Potential Obstacles 170
7. Conclusion **172**

PART 5: THE ROLE OF TRUST IN IRISH INDUSTRIAL RELATIONS **174**

1. Introduction **174**
2. The Significance of Trust in Industrial Relations **174**
3. Is the Relationship between the Irish Industrial Relations Actors a Trustful One? **175**
3.1 Trust between Unions and Employers 175
3.2 Trust in the Institutions 177
4. How Can Trust Be Built between the Irish Industrial Relations Actors? **177**
4.1 General Approaches to Building Trust 177
4.2 Building Trust by Conflict and Cooperation 182
4.3 Low and High Trust Surroundings 183
4.4 Building Trust through Training 184

4.5 Building Trust by Forcing Employer Engagement 184
4.6 Building Trust by 'Good Faith Engagement' 185
4.7 Trust Is Built in Crisis Situations 186
4.8 Procurement as a Means 186
4.9 Conclusion 187
5. Evaluation of the Role of Trust in Industrial Relations 189
5.1 Trust as a Reduction of Complexity 189
5.2 Trust and the Concept of Procedural Justice 190
6. Conclusion 192

PART 6: THE FUTURE OF IRISH VOLUNTARISM 193

1. Introduction 193
2. Should Voluntarism Remain the Principle of Irish Industrial Relations in Future? 193
2.1 Opinions of Trade Unionists 193
2.2 Opinions of Employer Representatives 196
2.3 Other Opinions 196
3. Does Legal State Intervention Contradict the Concept of Voluntarism? 197
3.1 Opinions of Trade Unionists 197
3.2 Opinions of Employer Representatives 198
3.3 Other Opinions 200
4. Conclusion 201

CHAPTER 5: VOLUNTARISM RECONSIDERED AND THE ROLE OF THE STATE 202

1. Does Voluntarism Still Exist? 203
2. Voluntarism and the Law 204
2.1 Voluntarism – A Dynamic Concept 204
2.2 Voluntarism and the Law – A Contradiction? 205
2.2.1 Origin-Based Perspective 205
2.2.2 Contemporary Perspective 206
2.2.3 Union Recognition – Enabling Voluntarism 208
2.2.4 Conclusion 210
3. The Role of the State in Irish Voluntarism 210
3.1 Voluntarism and the Labour Constitution 210
3.1.1 The Economy as a Public Good and Autonomy of the Social Partners 210
3.1.2 Minimal State Intervention as a Remaining Principle 212
3.1.3 Need for Stronger State Support in Ireland 213
3.2 The Idea of 'Institutionalised Voluntarism' as a Concept for the Future 214
3.3 The Law Alone Is Not Sufficient 216
3.3.1 Law as the Product of Human Endeavour 216
3.3.2 Law and Morality 217
3.3.3 The 'Voluntarist Mindset' 217
3.3.4 Union Weakness Remains a Threat 220
3.4 Conclusion 221
4. What Measures Could the State Take to Rebalance Power in Irish Industrial Relations? 221
5. Conclusion 223

CHAPTER 6: CONCLUSION **225**

1. Introduction **225**
2. General Conclusions **225**
3. Specific Results **227**
4. Generalisability of Findings **233**
5. Contribution and Implications **236**
6. Limitations and Future Research **237**
7. Final Conclusions **238**

BIBLIOGRAPHY **239**

APPENDICES
Appendix A: EU Minimum Wages Directive
Appendix B: Industrial Relations (Amendment) Act 2015
Appendix C: LEEF Report
Appendix D: Interview Question Set
Appendix E: Informed Consent Form, Plain Language Statement

List of Abbreviations

AI	Artificial Intelligence
ATCEUC	Air Traffic Controllers European Unions Coordination
CIF	Construction Industry Federation
ECHR	European Convention on Human Rights
ERO	Employment Regulation Order
EU	European Union
FDI	Foreign Direct Investment
HR	Human Resources
IBEC	Irish Business and Employers Confederation
ICTU	Irish Congress of Trade Unions
IDA	Ireland's Foreign Direct Investment Agency
IR	Industrial Relations
JLC	Joint Labour Committee
LEEF	Labour Employer Economic Forum
MNC	Multinational Company
NGO	Non-Governmental Organisation
REA	Registered Employment Agreement
SEO	Sectoral Employment Order
SIPTU	Services Industrial Professional and Technical Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
US	United States
WRC	Workplace Relations Commission

List of Tables

Table 1: Evaluation framework 46

Table 2: Overview of interview participants 57

List of Figures

Figure 1: Elements of voluntarism 9

Figure 2: Balance of power enabling voluntarism 14

Figure 3: The role of law in industrial relations 23

Figure 4: The abductive approach 52

Figure 5: Interview questions categories 58

Figure 6: ‘Principal characteristics of unionism in Ireland’ 68

Figure 7: ‘The process of generalisation’ 234

Figure 8: ‘Proximal similarity generalisation’ 235

ABSTRACT

This thesis entitled 'Does Voluntarism Still Exist? A Study on the Role of the State in the Voluntarist Industrial Relations System in Ireland' by Katharina Sophia Zimmer explores the role of the state in Irish industrial relations and evaluates whether voluntarism still exists. While traditionally the role of the state in Irish industrial relations has been limited to 'holding the ring' (Wedderburn, 1986) for the industrial relations actors to interact autonomously, current developments show increasing state legal intervention in an increasingly unbalanced system. A shift can be observed in the balance of power between unions and employers and their representatives. Trade union density and ultimately their power is shrinking, while employers exhibit a dismissive attitude towards participation in voluntary collective bargaining processes.

In this context, this study aims to define and reconsider Irish voluntarism and deduce a suitable future concept for Irish industrial relations. It analyses the current challenges to the balance of power between unions and employers and their representatives in contemporary voluntarism. It furthermore evaluates how the state can rebalance power by voluntarist and legal means. Beyond that, the thesis examines the existence of constitutional trade union recognition for the purpose of collective bargaining in Ireland, as well as the role of trust in Irish industrial relations. It therein aims to answer the fundamental question of whether voluntarism and state legal intervention are a contradiction in terms.

The main rationale of this study is to examine the role of the state in industrial relations, as well as the present and future of voluntarism in Ireland. Qualitative research was conducted to that end. The data was derived from semi-structured interviews with key actors and experts in Irish industrial relations, as well as from documentary analysis.

The thesis concludes that voluntarism no longer exists in its traditional sense. It has to be reconsidered with regard to the role of the state. The role of the state is increasingly significant. In this context, state legal intervention is not in contradiction with voluntarism but a potential means of enabling it to remain in place and continue to be the principle of Irish industrial relations into the future. However, the study asserts that the balance of power should ultimately be recalibrated if voluntarism is to remain the core characteristic of Irish industrial relations. This research contributes to research conducted on voluntarism and the role of the state and the law in Irish industrial relations.

ACKNOWLEDGEMENTS

I would like to thank my first supervisor Dr Eugene Hickland, who accompanied me on my academic path and strongly supported me during the course of my PhD studies. His deep knowledge and insightful feedback were always a great help. Furthermore, I would like to thank my second supervisor Dr Aurora Trif for her clear thinking and inspirational guidance. I would also like to express my appreciation for all interviewees and the time and effort they invested in the interviews conducted for this study. I am also grateful to Dublin City University Business School and its staff for the support they provided. My heartfelt appreciation goes to my mother Monika, who has always supported me during my life and along this way, and to my partner Nicolai. This achievement would not have been possible without you. Finally, I would like to express my deepest gratitude to my friend Daryl, who has been an inspiration to think independently and question established ideas critically.

CHAPTER 1: INTRODUCTION

1. Introduction

What is the role of the state in Irish voluntarist industrial relations? Little research has been conducted on Irish voluntarism and the issue of state intervention in it, in particular state legal intervention. The role of the state in Irish voluntarist industrial relations has traditionally been limited to 'holding the ring' (Wedderburn, 1986) and enabling trade unions and employers and their representatives to interact and resolve their affairs autonomously and in the absence of state legal intervention. However, in March 2021 Leo Varadkar, former Tánaiste and Minister for Enterprise, Trade and Employment, announced:

> *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 the 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.*
>
> (Varadkar, 2021)

To review collective bargaining and the industrial relations landscape in Ireland, a High Level Working Group was established under the Labour Employer Economic Forum (LEEF), a forum of government, trade union and employer representatives that aims to provide for tripartite dialogue on topics related to employment and the Irish economy.

The issue of the role of the state and the law in industrial relations, insofar as it might potentially run contrary to the bargaining autonomy of the social partners, has long been a topic of discussion in the literature, most prominently by Otto Kahn-Freund in his book *Labour and the Law* (1972). As he puts it, where terms and conditions of employment

can be regulated by collective bargaining, statutory law should generally not intervene in labour relations (Kahn-Freund, 1977, pp. 24–25). This long-lasting debate on the role of the state in industrial relations now becomes relevant for the recent practice of Irish voluntarist industrial relations.

2. Statement of the Problem

Irish industrial relations have traditionally been described as voluntarist, meaning that the role of the state tends to be limited to providing an arena for the industrial relations actors to interact and conduct free collective bargaining in the absence of state legal intervention (Cullinane and Dobbins, 2014, p. 54; Hickland and Dundon, 2016, p. 237).

However, as also indicated by Leo Varadkar, Tánaiste and Minster for Enterprise in 2021, this traditional approach faces challenges as a result of national, European and international developments. At national level, voluntarism is confronted with increasing state legal intervention, traditionally perceived as running counter to it. Other challenges, such as a decline in union bargaining power and increasing neoliberalism, erode the traditional concept of Irish voluntarism and call its existence and survival into question (King, 2006). At European level, *Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union* demands that EU Member States take measures to increase their collective bargaining coverage and foster industrial democracy. At global level, increasing neoliberal structures, as well as a high turnover of economy- and employment-related processes and developments can be observed, and economies have to adapt to remain competitive while constitutional states try to protect their core values with regard to employment relations.

This study will examine the role of the state in Irish voluntarist industrial relations regarding the question of whether the Irish industrial relations system is still voluntarist. To answer the main research question:

What is the role of the state in the Irish voluntary industrial relations system?

This study will answer the following sub-research questions:

1. *What challenges to the balance of power exist in Irish industrial relations?*
2. *To what extent can power be rebalanced in the voluntarist sphere?*
3. *To what extent can power be rebalanced in the legal sphere?*

4. *Does constitutional trade union recognition exist and what implications does this have?*
5. *What role does trust play in Irish industrial relations?*
6. *Does voluntarism still exist in Irish industrial relations?*
7. *Are voluntarism and state legal intervention contradictory?*
8. *What could be a future concept for Irish industrial relations?*

To evaluate the issue at hand, this qualitative study conducted semi-structured interviews with key Irish industrial relations actors from among the trade union, employer and state sides, as well as with academic experts. The study thereby aimed to collect the most meaningful information available on the topic from key experts in the area. Interviewees commented on current challenges and potential solutions regarding the balance of power in Irish voluntarist industrial relations and evaluated the role of law, including the role of constitutional trade union recognition and the role of trust in Irish voluntarism.

On that basis, the thesis discusses whether voluntarism still exists in Irish industrial relations; whether voluntarism and state legal intervention are contradictory; and what a future concept for Irish industrial relations could look like in terms of reconsidering voluntarism.

3. Significance and Contribution of this Study

Industrial relations are an important feature of democracy in constitutional states and in many of them bargaining autonomy is a constitutional right that the state must protect. Workers should determine their working conditions autonomously, seeing their will represented by trade unions. In Ireland, free collective bargaining is a striking feature of the relationship between trade unions and employers and their representatives when it comes to realising this aim. This is reflected in the tradition of voluntarism. During a period in which anti-democratic tendencies are on the rise worldwide, the participatory process of industrial democracy is gaining in importance, and the state has a duty to ensure constitutionally sound industrial relations. It is a guarantor of the realisation of the citizens' will in the economy (Dukes, 2014, pp. 24–25). As already stated by lawyer and politician Hugo Sinzheimer in 1919, on the occasion of the creation of the Weimar Constitution, the economy is a public good and people have an interest in the well-functioning of the welfare state. The question arises of the extent to which the state should

intervene in industrial relations to ensure this aim, while at the same time remaining within the law itself and adhering to the constitutional right of bargaining autonomy.

The study of the role of the state in industrial relations has therefore been, and remains, highly important. However, this topic is of considerable complexity and therefore difficult to evaluate. In the face of such complexity the researcher perceives this study as part of an ongoing process. However, it is in the nature of research to be not a 'one-off' process but a continuing process of discovery (Gummesson, 1991) involving the contributions of different people with different perspectives. Only in this way can at least some objectivity emerge and complex matters be researched in an adequate way. This thesis aims to contribute to this research process by looking at industrial relations as a versatile area at the interface of sociology, economy and the law.

This study aims to contribute to the study of voluntarism. As defined by Flanders (1970), '[v]oluntarism is commonly defined as a system of industrial relations based on voluntary settlements between employers, employees and their representatives, rather than legal regulation'. However, studies on voluntarism are rare and its concept and definition remain vague. This study therefore intends to define and reconsider voluntarism by examining not only its theoretical description but its core meaning. We shall assume that a certain balance of power has, as in other pluralist democracies, to underlie the concept of voluntarism for it to actually be in place. The role of state legal intervention in voluntarist industrial relations thus becomes important. According to Kahn-Freund (1977, p. 3), '[l]aw is a technique for the regulation of social power.' This study will discuss the potential contradiction between voluntarism and the law, with the traditional approach of the absence of state legal intervention in voluntarism and the need of the state to rebalance the power that underlies voluntarism. As expressed by Kahn-Freund (1977, p. 3), who highlights the unequal distribution of power in industrial states, 'There can be no society without a subordination of some of its members to others, without command and obedience, without rule makers and decision makers.'

4. Outline of this Study

This study will examine the relevant literature on the concept of voluntarism and the balance of power, the role of law in industrial relations and collective bargaining in Irish voluntarism in **Chapter 2** (*Literature Review*). It will evaluate, first, the topic of voluntarism, its definitions and core meaning, as well as the idea of the underlying

balance of power (**Chapter 2, Part 1**). Second, it will examine the role of law in industrial relations and the idea of procedural justice (**Chapter 2, Part 2**). And third, it will outline collective bargaining in Irish voluntarism and therein closely describe the Irish industrial relations landscape (**Chapter 2, Part 3**).

It will then explain the research methods used to conduct this study in **Chapter 3** (*Research Methods*).

Thereafter, the thesis will describe and evaluate the collected data on challenges, as well as voluntarist and legal solutions to the balance of power in Irish industrial relations and examine the topics of constitutional union recognition, the role of trust and the future of voluntarism in Irish industrial relations in **Chapter 4** (*The Data and its Evaluation*). It will examine challenges to the balance of power in Irish voluntarism (**Chapter 4, Part 1**). The study will then evaluate ways of balancing power in the voluntarist sphere (**Chapter 4, Part 2**) and in the sphere of state legal intervention (**Chapter 4, Part 3**). It will also evaluate the role of constitutional union recognition (**Chapter 4, Part 4**) and trust (**Chapter 4, Part 5**) in Irish industrial relations. Ultimately, it will outline the thoughts of interview participants on the future of voluntarism in Ireland (**Chapter 4, Part 6**).

The thesis will then discuss the role of the state in Irish voluntarism and ask whether voluntarism still exists. It will therein reconsider the traditional meaning of voluntarism in **Chapter 5** (*Voluntarism Reconsidered and the Role of the State*). While Chapter 4 evaluates subtopics, this chapter constitutes the final discussion of the study. It brings together the results of the data and its evaluation in Chapter 4 and the concepts and ideas outlined in the literature review.

Finally, conclusions will be drawn from the research conducted for the study in **Chapter 6** (*Conclusion*) and the study's contributions will be outlined, as well as areas for further research.

CHAPTER 2:
LITERATURE REVIEW

INTRODUCTION

Chapter 2 outlines the literature review of this study.

Part 1 examines the concept of voluntarism in industrial relations and evaluates its traditional meaning. It then explains the underlying concept of the balance of power between the industrial relations actors. It also argues that voluntarism is based on the existence of a balance of power in industrial relations and draws attention to the fact that the meaning of voluntarism is vague, although its core element has traditionally been the absence of state legal intervention.

Part 2 describes the role of law in industrial relations. It outlines the purpose of law in the labour market and takes *Labour Constitution Theory* as the theoretical approach for this study. Furthermore, it explains the role of the legislature, the judiciary and the constitution, as well as the concept of procedural justice.

Part 3 examines the issue of collective bargaining in Irish industrial relations and the Irish industrial relations landscape. It outlines the definition of collective bargaining and its purpose. Furthermore, it describes the Irish collective bargaining parties and their approach to it, as well as the role of the Irish state, the Irish Labour Court and the Irish Constitution. It examines recent developments influencing collective bargaining in Ireland at national as well as at EU level. Moreover, it evaluates the topic of constitutional union recognition and the underlying controversy.

Part 4 outlines the conclusion of this chapter, as well as the analytical framework and the research questions.

PART 1: VOLUNTARISM AND THE BALANCE OF POWER IN INDUSTRIAL RELATIONS

1. The Traditional Concept of Voluntarism

The Irish industrial relations system has traditionally been described as voluntarist (Cullinane and Dobbins, 2014, p. 54). Unions and employers and their representatives would negotiate in the absence of state legal intervention and shape their relationship autonomously. The role of the state in voluntarism has been limited to 'holding the ring' and providing a basis for the industrial relation actors to deal with their affairs independently (Wedderburn, 1986). The Irish state has provided this basis by establishing the Irish Labour Court and setting minimum employment conditions (Hickland and Dundon, 2016, p. 237). Traditionally, the concept of voluntarism is characterised by the absence of state legal intervention; unions distrusted the state interfering in their affairs legally and preferred to take industrial action to enforce their rights instead (Doherty, 2013, p. 172). However, because of the principle of 'legal abstentionism' in Irish voluntarism, employers also arbitrarily decided whether or not they would engage in collective bargaining as no obligations were placed upon them in terms of recognising or negotiating with a union (Wallace et al., 2020, p. 31). In voluntarist systems, both unions and employers and their representatives traditionally oppose the interference of the state in their affairs and negotiate and regulate those affairs autonomously on the basis of respect and trust (von Prondzynski and McCarthy, 1984, pp. 28–29). Being close to the people and the issues they represent, they are seen as the core experts in this respect and should not be limited or restricted by the state in terms of their ways of dealing with them. As this study conducts research on the role of the state in Irish voluntarism and aims to answer the question of whether the Irish industrial relations system is still voluntarist, it should first be defined what voluntarism is.

1.1 Definitions of Voluntarism

A few attempts have been made to define voluntarism more closely.

Flanders (1970) defined it as follows: 'Voluntarism is commonly defined as a system of industrial relations based on voluntary settlements between employers, employees and their representatives, rather than legal regulation.' Crouch (1994) described voluntarism as unions and employers and their associations shaping an industrial relations system that

is characterised by limited state interference. According to Salamon (2000, p. 85), voluntarism is 'the freedom of the parties to organise themselves, to determine the nature and content of their relationship and to regulate it without governmental or legal intervention'. The industrial relations parties should therefore be able to act autonomously and without any interference by the state and the law. As Demougin et al. (2021, p. 685) define it: 'Voluntarism is the regulation of Employment Relations (ER) by non-state actors who voluntarily agree on norms to be implemented without adjudication by courts and direct legal regulation by the state.' Hong (1982, p. 748) claims: 'In essence, the notion of "voluntarism" implies a belief in the efficacy of private action as a lever in social and economic affairs, as against state action which requires the intervention of a third party, often with a degree of coercion backed by legal or administrative sanctions.' The following key components of voluntarism were developed by King (2006, p. 72): freedom of self-organisation by the parties, self-determination of the nature, content and regulation of the employment relationship, minimal governmental intervention and minimal legal intervention.

Further concretisations and valuations of voluntarism have been made. Dukes (2015) says that 'voluntarism emphasises the autonomy of collective actors to organise their own affairs as a precondition for joint regulation, including deciding on their organisational structure and internal governance'. Kerr (2017, p. 894) breaks it down to the role of institutions, union recognition, collective agreements and their binding or non-binding nature. According to Kerr, they function as determinants of the existence or non-existence of voluntarism. When talking about voluntarism, positive and negative facets are stressed. White (1978, p. 34) states that 'voluntarism is a form of "industrial self-government", which is deemed to be the most effective way of running industry'. However, Dobbins (2010, p. 499) finds that 'voluntarism has constituted what can be termed a permissive system because it places few constraints, aside from a tendency towards minimalist regulations, on employer actions'. Demougin et al. (2021, p. 686) emphasise with reference to Flanders (1974) that the definition of voluntarism is dependent on the specific context in a country. However, the authors state 'voluntarist rules and contracts are not enforced specifically by courts or state. Their implementation depends instead on the capacity, intentions, and power of private actors.' According to White (1978, p. 34), voluntary acts are acts that are 'spontaneous, performed through free will and not constrained by another, or by others'. As the author stresses, associations like trade unions

constitute an extension of free individual will. It becomes evident that voluntarism has a lot of various facets and is defined differently by different people.

Figure 1 outlines the different approaches that have been taken to defining voluntarism.

Figure 1: Elements of voluntarism



It becomes apparent that voluntarism lacks a universal definition and is rather a vague concept with different facets. It is defined mainly in terms of the absence of or in contrast to state legal intervention. Some even see it as a tradition or ideology. As Flanders (1974, p. 352) puts it: with regard to 'what is called the voluntary system or, sometimes, *free* collective bargaining. Whatever this may mean – and I shall be arguing that its meaning is very far from precise – there can be no doubt that this ideology is also an established

tradition with a considerable force.' Hence, to understand voluntarism more closely, its origin needs to be examined.

1.2 The Origins of Voluntarism

Irish voluntarism has its roots in the United Kingdom's (UK) industrial relations system. The term 'voluntary' in this context goes back to the nineteenth century. Edward Miall, an English journalist and Liberal Party politician, published the book *Views of the Voluntary Principle* in 1845. He stressed that in the industrial context, state intervention would restrict 'freedom and flexibility' in 'communities of men', while voluntarism would foster the 'free choice of men' and the community's 'consent by persuasion' and that only in this way could a 'spontaneous sense of obligation' be encouraged (see also White, 1978, p. 35). Miall thereby stressed the democratic importance of the collective will and its articulation, as well as the increase of a sense of responsibility by autonomous actions.

However, the voluntarist principle was referred to only rarely at the beginning. In its fifth and final report of 1894, the *Royal Commission on Labour* stated that 'we are against giving voluntary trade or district boards of conciliation powers similar to those possessed by courts of law' (para. 298) and thereby enhanced the independent and non-binding character of industrial relations negotiations. The *Industrial Council Report on the Enquiry into Industrial Agreements* in 1913 claimed that pure voluntarism was based exclusively on the sense of a 'moral obligation' of employers and workers (para. 11) contrast to binding obligations for either of the industrial relations actors. Subsequently, it was also emphasised that in a voluntarist setting, people who would 'really understand their business' would come together, meaning that while the state would not intervene, the actors of industrial relations, being experts in their own affairs, would deal with their own matters autonomously (Parkes, Debates on the Trade Boards Bill, 1909). The aspects in dispute should therefore not be regulated by the state, but as close to the affected parties as possible and with all the practical and theoretical knowledge necessary to lead to a good and amicable solution. The upshot of all this is that certain aspects of voluntarism were touched on independently from each other in the course of time, but this did not lead to a proper common understanding. According to White (1978, p. 36), it is even remarkable that the term 'voluntarism' as a concept in its own right was not mentioned historically, neither in the *Royal Commission Reports (1869–1906)*, the *Industrial*

Council Report (1913) or Webb and Webb's landmark publication *Industrial Democracy* (1897). As the author states, voluntarism even 'meant different things to different people', although at its core historically it could be seen as 'the absence of state interference and/or legalistic powers' (White, 1978, p. 36). Samuel Gompers, British-born union leader and founder of the American Federation of Labour, defined voluntarism as 'individual liberty and freedom from state interference' (Gompers, 1930, p. 96). His approach to voluntarism spilled over in the course of time to significantly shape the UK voluntarist approach and thereby the origin of Irish voluntarism in its beginnings.

As Flanders (1974, p. 353) explains, voluntarism in nineteenth century Britain was originally an expression of self-help and *laissez-faire* and was characterised by an absolute distrust of any intervention by the state. As the author explains: '"We rely on our own organisations" meant "we want no help from governments", not merely "we do not want them to interfere in our affairs".' Unions strongly believed that they would best achieve their aims when relying on their own voluntary associations (Rogin, 1962, pp. 521–522). This purely voluntarist approach meanwhile implied that employers and their representatives could not be obliged to recognise unions or to negotiate with them. As Hong (1982, p. 748) states: 'In industrial relations, the underlying assumption, as in the doctrine evolved in Great Britain, has been the faith placed by workers and unions in the virtues of their independence and self-reliance as affirmed through their own voluntary associations.' Hong explains that British industrial relations were characterised by three main features, namely the 'allied philosophy of legal abstention', the 'doctrine of collective *laissez-faire* … which holds that organised power groups of labour and employers should be given a more or less free rein in a pluralist society, with the State acting at best as the mediator', and the precedence of collective bargaining over legal regulation (Hong, 1982, p. 748). As Demougin et al. (2021, p. 687) claim, the origins of voluntarism were shaped by a state that was hostile to unions, 'whose activists could be fined, imprisoned, and deported'. Over time, in contrast to continental European countries, unions in the UK did not foster the enactment of labour law and preferred voluntary collective bargaining, as the authors state. The mindset of 'collective *laissez-faire*' 'has worked in Britain because labour unions there have been power centres, effective in organising themselves and in dealing with employers, their organisations and the state machinery, thereby sustaining a balance of power in a pluralistic society that institutionalises industrial democracy', as Hong (1982, pp. 749–750) explains. Unions

also favoured the *laissez-faire* approach as they wanted to avoid precedents set in anti-union court judgments, as the common law was seen to be hostile to them (White, 1978). As Demougin et al. (2021, p. 687) explain, unions' and employers' associations concluded informal agreements to regulate their affairs and developed 'employment relationships and arbitration mechanisms, with both underpinned by relative actor power and the actual or threatened use of forcing strategies such as strikes and lockouts'. As stated by Dickens and Hall (2003), employers continued to prefer the absence of state legal intervention as regulation would restrict their commercial freedom.

Today's descriptions of voluntarism, as well as its original meaning, suggest that voluntarism has remained a vague concept over time, although it can be concluded that there is one striking core element that is always stressed in the traditional definition, namely the absence of state legal intervention. However, historically unions were strong and relied on their own capacities to guarantee a certain balance of power in labour relations, while rejecting intervention from the state, in circumstances in which the courts were hostile to them and potentially weakened their power. Voluntarism protected unions, guaranteed a certain power balance in industrial relations and was therefore supported not only by the employers but also by the unions.

2. The Concept of Balance of Power in Industrial Relations

The idea of a power balance underlying voluntarism should be further examined in the following. Without a balance of power between the industrial relations actors, de facto there may be no voluntarism. *Free* collective bargaining can exist only in a system of equal or almost equal power. The term 'voluntary' already demonstrates this. Where one party has too much power over the other party, voluntariness cannot exist. As Weber (1947, p. 152) states, power in a certain context is the 'probability that one actor within a social relationship will be in a position to carry out his will despite resistance'. Huczynski and Buchanan (2010, p. 694) describe power as the 'capacity of individuals to overcome resistance on the part of others, to exert their will and to produce results consistent with their interest and objectives'. Hyman (1975, p. 26) defines power in the employment relationship as the 'ability of an individual or group to control their physical and social environment; and as part of this process, the ability to influence the decisions which are and are not taken by others'. Workers unite collectively to exercise power over the employer side, which is the ultimate aim of unions and their main reason for existence.

This power is of democratic origin and gives the individual the possibility of exercising their otherwise weak individual power by strong collective means.

In 1897, the term ‘industrial democracy’ was used by Webb and Webb in the context of industrial relations and collective bargaining. Through collective bargaining, democratic participation is reached and power is asserted. Trust and equality can be seen as preconditions of this system working. According to Clegg (1975), collective bargaining is the equivalent of industrial democracy and leads to system stability. As Wallace et al. (2020, p. 4) explain: ‘Just as the political system is institutionalised and regulated through a party political and parliamentary process, so too is it desirable that the industrial system is institutionalised and regulated through representative organisations and appropriately structured processes’. Doolan (2011, p. 12) explains the concept of the limitation of power in democracy, which can also be applied to industrial relations: ‘By separating the organs of government, limited power is conferred on each; thus, no organ is possessed of unlimited power. Abuse of power by one can be checked by the others and tyranny, hopefully, is prevented.’ The author stresses that an abuse of power can be prevented by actors who limit their powers mutually, so that no actor alone possesses unlimited and uncontrolled power. It is the purpose of voluntarism to enable collective bargaining to function effectively. In such a system and to avoid too much state legal intervention, the actors of industrial relations must be flexible, develop the right mindset and respect the balance of power between them. If procedures are not efficient and the mindset is not adequate to ensure a balance of power in the industrial relations system, state legal intervention can constitute a potential means to ensure that voluntarism can take place at all. The existence of a balance of power is mandatory for the existence of voluntarism and can, in the first instance, be brought about by unions and employers and their associations, or, in case of failure, by the state. In the first case, the re-establishment of a balance of power, it is a prerequisite for voluntarism, while in the second case it constitutes a limitation on ‘legal absenteeism’. If the power between the industrial relation actors can be rebalanced, it does not limit voluntarism but ensures its efficiency and the achievement of its very objective.

Figure 2 describes the idea of the balance of power serving as the basis for the existence of voluntarism. It can be created either *naturally*, within the sphere of the autonomous industrial relation actors, or *artificially*, by the state, for example, by way of state legal intervention.

Figure 2: Balance of power enabling voluntarism



3. Conclusion

Voluntarism is a vague concept and there is no universal definition. As it is highly dependent on its context and how it is perceived; it could even be seen as an ideology or industrial relations tradition. Originally, it evolved out of the intention of unions and employers to act autonomously, which was in the interest of both parties at this time. In the early days, unions aimed to protect and extend their power by rejecting state legal intervention in their affairs. However, for voluntarism to take place, there must exist a balance of power in labour relations, which unions traditionally achieved by exercising their collective power. The existence of a 'balance of power' between the industrial relation actors must be added to the definition of voluntarism as a precondition. It is the core enabler for real voluntarism to take place and at the same time the limitation on 'legal absenteeism'. When there is no balance of power, voluntarism cannot exist.

PART 2: THE ROLE OF LAW IN INDUSTRIAL RELATIONS

1. The Role of Law in Industrial Relations

The question of the role of law in industrial relations is a specific, as well as a versatile one. Law is an expression of state power and one of the state's strongest means of intervening in industrial relations. Industrial relations are located at the interface of sociological, economic and legal aspects. Historically, labour law has accompanied and influenced relations between workers and employers. According to Kahn-Freund (1977, p. 45), there have been political battles about collective power relations in the labour market and the use of the law to regulate it to the advantage of either the one or the other side of the labour conflict. The question of the role of law in industrial relations is therefore also a question of power and its regulation.

1.1 The Purpose of Law in the Labour Market

Nobody has described the purpose of law in industrial relations as accurately as Otto Kahn-Freund, a German-British jurist and famous scholar of labour law. As Kahn-Freund stated (1977, p. 3): 'Law is a technique for the regulation of social power.' In his landmark book *Labour and the Law* he goes on to explain that power is not evenly distributed within society. As he states: 'There can be no society without a subordination of some of its members to others, without command and obedience, without rule makers and decision makers' (Kahn-Freund, 1977, p. 3). He highlights that, particularly in industrial states, power is unequally distributed.

Kahn-Freund also claims that law shapes 'social power' and is therefore deeply interwoven with it. 'Social power', as he defines it, is the power 'to make policy, to make rules and to make decisions, and to ensure that these are obeyed' (Kahn-Freund, 1977, p. 3). He states that 'social power' can be supported, limited or created by law, but law cannot be a source of 'social power'.

Concerning the purpose of law in industrial relations, Kahn-Freund (1977, pp. 3–4) made a statement that is indispensable for a realistic view of industrial relations: 'The law does and to some extent must conceal the realities of subordination behind the conceptual screen of contracts considered as concluded between equals.' According to him, the purpose of law is thus to regulate, support and limit power, both on the employers' and

the workers' side. It is a countervailing force to bargaining power and the corresponding imbalances of power (Kahn-Freund, 1977, p. 6). However, he also explains that 'the policy of the law has always been not to regulate the employment relation by statute where this could effectively be done through collective bargaining' (Kahn-Freund, 1977, pp. 24–25).

1.2 Theoretical Approach: Labour Constitution Theory

According to *Labour Constitution Theory*, labour law constitutes a framework for social and economic dynamics as it occurs in industrial relations. The theory goes back to Hugo Sinzheimer (1875–1945), an influential legal scholar, and a political and professional role model for Kahn-Freund who, among other things, contributed to the writing of the Weimar Constitution of 1919. Sinzheimer brought the idea of democracy from the political to the economic sphere (Schiek, 2010).

Labour Constitution Theory refers to 'an economy governed by capital and labour acting together in furtherance of the public good' (Dukes, 2014, p. 4). In this context, the labour constitution is seen as the body of law regulating the economy collectively.

As Sinzheimer described it in his scholarly article 'Eine Theorie des Sozialen Rechts' [Theory of social law] (1936), by means of labour law the state recognises the actors in the economy and empowers them to act, but at the same time also limits their powers. The theory can be assumed to refer to democracy and the underlying balance of power between all the actors involved in it. Sinzheimer emphasised that the economy was not a private, but a public matter. Economic democracy should help to emancipate workers. As Dukes puts it (2014, p. 23), Sinzheimer considered the primary aim of labour law to be 'the facilitation of the autonomous regulation of employment relations and working life by collectivised labour and employers or employers' associations'.

His approach to the role of the state was that while the autonomy of the industrial relations actors was important, they should not be granted absolute freedom from state intervention as this would create an imbalance of power to the advantage of the employers' side (Dukes, 2014, p. 24). Collective regulation could not be seen as a guarantee of the realisation of collective interests. However, 'the state should assume the role in the economy of the ultimate guarantor of the public interest' as it also has an interest in a well-functioning economy and the concomitant social and economic conditions (Dukes,

2014, pp. 24–25). Therefore, state intervention with the aim of strengthening the public interest should take place in tandem with social partner autonomy.

1.3 The State Making Law

Within the framework of the separation of powers, there are different ways for the state of making law. These are outlined in what follows.

1.3.1 The Role of the Legislature

According to Faulkner (2018, p.1), legislation is 'law that has been promulgated (or enacted) by a legislature (a body with the power to make laws)' and is also termed 'statutory law'.

Statutory law regulates the labour market to some extent. In the labour market it interacts with collective bargaining. They are 'two sides of the same coin'. As stated by Kahn-Freund (1977, p. 44), collective bargaining can generally be seen as more adaptable, while legislation is rather rigid. The author emphasises that when rules for the improvement of labour relations are made in the form of statutory law, this can fail to consider the 'subtle shades of expression' of human beings because legal definitions are by nature rigid and somehow disconnected from human nature (Kahn-Freund, 1977, p. 46). Hence, the regulation of labour relations can best be achieved based on the interplay between legislation and collective bargaining in terms of a dynamic interaction. This is also stressed by Sorrell (1969, p. 7), who says that besides the law there are also other effective non-legal ways to regulate industrial relation matters, such as custom, depending on the particular context. As Kahn-Freund (1977, p. 39) puts it: 'It is sometimes (but not always) the case that, as the unions get industrially stronger, the significance of collective bargaining grows and that of legislation diminishes whilst, as their political influence increases, so does the volume and significance of regulatory legislation.' Again according to Kahn-Freund (1977, p. 38) the rules of employment can either express managerial power or a merger of legislation and collective agreements. Rules of employment may turn out to benefit both sides of the labour conflict. For that purpose, they must fit and be adapted to contextual situations.

1.3.2 The Role of the Judiciary

Judiciary applies and interprets the Constitution and the law. It aims to resolve disputes between the state and the individual or between individuals (Doolan, 2011, p. 41). In

democratic states, judges must be independent within the framework of the separation of powers. Though a court decision is made by a certain judge, it does not serve to represent his or her own opinion but should serve to represent the will of the citizens in terms of a concrete and just application of the law (*Curtin v Dáil Éireann, [2006] IESC 14*).

1.3.2.1 The Nature of the Judiciary

As Kelsen asserts (1967, pp. 236–237) judicial decisions have a constitutive, not merely a declaratory character. The courts apply general legal norms by individualising them to generate a concrete sanction. The creation of such individual norms is 'a transitional stage of the process that begins with the establishment of the Constitution, continues via legislation or custom to the judicial decision, and leads to the execution of the sanction' (Kelsen, 1967, p. 237). The author claims that in this development from the general to the individual, the law keeps renewing itself, which leads to concretisation.

In industrial relations, however, common law and the role of the courts has been of minor importance as case law only operates *ex post* in situations in which something has already gone wrong but industrial relations require regulation *ex ante* (Kahn-Freund, 1977, p. 18). According to Kahn-Freund, the courts' principal function is therefore to interpret given statutes. Furthermore, at his time, '(t)he great success of collective bargaining has reduced the need for the intervention of the courts' (Kahn-Freund, 1977, p. 22).

1.3.2.2 The Courts Creating Law

Judge-made law is generally dependant on the outcomes of previous court decisions and the precedents that – particularly – superior courts set (Faulkner, 2018, p. 5). A tribunal can therefore create law that amounts to statutory legal regulation. In this way, it can create legal development and interact with the legislature bidirectionally in such a way that judiciary and legislature countervail each other. However, as Kahn-Freund (1977, pp. 1–2) emphasises: 'More than that, on a number of vitally important occasions Parliament had to intervene to redress the balance which had been upset by court decisions capable of exercising the most injurious influence on the relations between capital and labour.'

As Kelsen (1967, p. 250) states: 'A court, especially one of the highest instance, may be authorised to create by its judgment not only an individual norm binding for the present case, but a general norm.' The decision then becomes a precedent and gives direction to the jurisdiction of similar cases. However, it is not undisputed that a court can function

as a ‘legislator’ and there is only a small distance between situations in which it is authorised to function as such or not (Kelsen, 1967, p. 244). Ultimately, the judiciary is not a legislature and not legitimated as such.

1.3.2.3 Judges’ Subjectivity

Special attention is therefore needed when it comes to the question of whether a court can and must be objective. Only a single legal opinion is expressed in a court decision (Kelsen, 1967, p. 240). This specific opinion depends on the knowledge, experience and personal background of the judge. When court decisions create or develop law or interpret norms, judicial subjectivity can be regarded as not neutral or even as undemocratic. However, judicial subjectivity is hard to measure – or to avoid. Also, legal outcomes can be regarded differently, depending on the observer; they can be ‘judged as unsatisfactory by a Socialist, but entirely satisfactory by a Liberal’ (Kelsen, 1967, p. 247).

Edlin (2016) even raises the question: ‘Are judges supposed to be objective?’ and questions the classification of subjectivity as a negative and objectivity as a positive feature. However, as court cases are mostly specific and not general and as no case is exactly like another, it is questionable whether the application of a general norm to a specific decision can ever result in a fair outcome (Kelsen, 1967, p. 252). Also, as Kahn-Freund (1977, p. 24) notes: ‘Moreover, even if the courts had been willing to pierce the veil of equality it would have made little difference in that large majority of cases in which the fact of subordination itself would have prevented the employee from relying on the law.’ The author claims that because of this reality of subordination, labour regulation had to be provided by legislation and collective agreements, as courts would normally not take the reality of subordination sufficiently into account.

Furthermore, the burden of declaring a certain court judgment unlawful is high, although the court is not the primary state legislator, which is legitimated by ‘the people’. To hold the view that a court judgment is actually unlawful, the creation of the individual norm by the court must be incoherent with its superordinated general norm, either in terms of process or content (Kelsen, 1967, p. 268). Apart from that, the decision-making scope for the court is wide. This can be problematic if precedents for matters of industrial relations are set by the court, which is neither an expert on industrial relations, like unions and employers and their representatives, nor the country’s legislator.

In the end, it is most important to stress that whatever a judge's approach to a certain case may be and whatever decision is made, the court decision should and must serve to represent the will of the citizens in terms of a concrete and just application of the law (*Curtin v Dáil Éireann, [2006] IESC 14*). The judge is independent but has to act as a representative of the people's will and of societal and constitutional values.

1.4 The Role of the Constitution

According to Doolan (2011, p. 8), all powers of the government are based on the will of the people. As he puts it: 'In constitutional theory the People are the sole organ of government possessed of unlimited powers. The People, the first and primary authority, created the State, the institutions of government and declared fundamental rights.' They should ultimately decide about all aspects of national policy. The Constitution applies to a certain nation. As Doolan (2011, p. 8) says, a nation is 'a body of people recognised as an entity by virtue of their historical, linguistic, religious or ethnic links and without regard to political or geographical boundaries', where the people are the 'primary law-makers and the ultimate source of authority'. The Constitution is not a law provided by the state, as statutory law is. It is the basis of social and political life that the people of a particular country have applied to themselves autonomously. It reflects core values of the community. The people as well as the state are subject to it and their actions must comply with. In constitutional states, this comprises the *freedom of association*, which is an essential constitutional right regarding industrial relations. The constitutional *freedom of association* of the Irish nation will be further explained in Chapter 2, Part 3. It is of fundamental importance to the analysis of voluntarist industrial relations.

2. The Concept of Procedural Justice

In many respects, industrial relations are about process. The creation of norms and collective bargaining are processes. State legal regulation mainly targets at the regulation of processes and procedures. Therefore, evaluating the theoretical context of processes and procedures is of the utmost interest with regard to industrial relations. This is what is represented by *Procedural Justice Theory*. Instead of questioning primarily the fairness of results, *Procedural Justice Theory* focusses on the fairness of the process.

As defined by Tschentscher (2018, p. 105) 'Procedural justice is the correct application of a procedure that is likely to increase the chance of the outcome being just.' Thematisation of just procedures has always been inherent in discussions about

democracy (Röhl and Machura, 2018, p. ix). As mentioned in Chapter 2, Part 1, democracy is here relevant in the form of industrial democracy (Webb and Webb, 1897). According to D'Art (2020, p. 95), fair procedures can counteract abuses of power. Therefore, they allow for regulation of the balance of power in industrial relations. Greenberg and Folger (1983) described the 'fair process effect'. This means that people are more inclined to accept an outcome if the procedure that reached it is seen as just by the parties involved. It could be claimed that a fair outcome therefore depends on parties' subjective perception that they have been able to participate in its formation and their concerns 'have been seen'. As Tyler and Degoey (1995) put it: 'The ability and right to a voice is linked with feelings of respect and value, which emphasises the importance of the interpersonal factors of procedural justice.' Furthermore, it is also a matter of control (Thibaut and Walker, 1975).

In 1969, Niklas Luhmann discussed the topic of procedural justice in his book *Legitimation by Procedure*. He claims that processes in themselves legitimate the political system. Unlike natural sciences, results are not universally 'true' or 'false'. In social procedures, results are legitimated by the parties involved, not by de facto validity. He considers such social legitimation to be equal to binding validity. Luhmann states that it is immanent to social procedures that they are not static but emerge in a flexible and adaptive way and the process sequence is variable, depending on the conduct of the parties. In this context, legal procedural rules cannot be equated with the process itself. Justification by norms is not justification by process. However, procedural rules reduce complexity. One process for reducing complexity is the building of trust, as Luhmann shows in his book *Trust* (1968).

But how to measure procedural justice? Leventhal (1976) developed rules of justice and structural components for procedural justice (*'Leventhal's Rules'*). He concretises the following rules of justice: consistency, bias suppression, accuracy, correctability, representativeness and ethicality. Lind and Tyler (1988) were inspired by Leventhal and developed criteria to measure how people perceive procedural fairness. These are correctness of the information, consistency, avoidance of prejudice, equal representation of the parties, reviewability of the decision by an appellate tribunal, and ethical appropriateness.

An author who developed ideas for an ideal procedure that would lead to fair society was John Rawls. In his book *A Theory of Justice* (1971), Rawls came up with the concept of a social-political order basing on freedom and equality. According to Röhl and Machura (2018, p. 20) the philosopher claims that the fairness of an outcome derives from the fairness of procedure. This procedure has to be accepted by free and equal individuals who act on the basis of rational egoism.

In the context of procedural justice, Habermas (1992) is well known for his 'discourse theory'. According to this, outcomes are validated by the truth arising from rational discourse. 'Discourse theory' targets the means of communication. There should be neither dominance nor subordination in discourse. As Rosenfeld (1996, p. 792) puts it, '[i]ndeed, Habermas's proceduralist approach based on communicative action deals with the residual arbitrariness of democracy by relying on dialogical consensus as the source of law's legitimacy.'

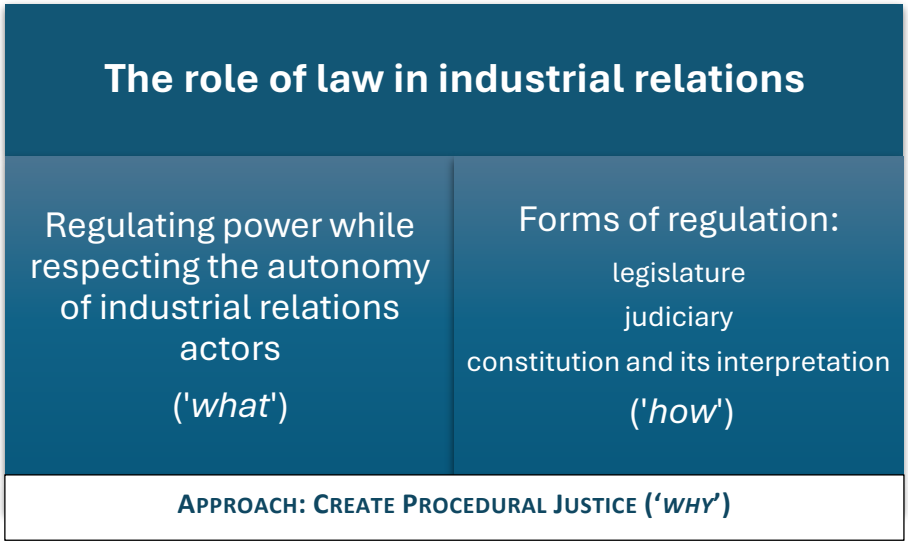
These ideas can be transposed to industrial relations. Collective bargaining at its core is all about dialogue, conflict and consensus and hence about the process of communication between unions and employers and their representatives. Both sides of the labour conflict want their voice to be heard and results to be legitimated by fair and meaningful participation in the formation process. Unions as well as employers and their representatives also want to exercise control on collective bargaining processes and procedures and thereby the corresponding outcomes. It can therefore be seen as a purpose of the law in industrial relations to provide for procedural justice where the latter is not in place.

3. Conclusion

The role of law in industrial relations is versatile and complex. Law should serve to regulate power while at the same time guaranteeing the autonomy of the social partners. The state can regulate power in industrial relations by means of the legislature and the judiciary. Furthermore, it is regulated by a nation's Constitution. The idea of procedural justice underlies the concept of legal regulation in industrial relations, as the latter is all about processes in many regards, as well as the creation of the legitimacy of results by means of fair procedures. It is the purpose of the law in industrial relations to provide for procedural justice where it is not in place.

Figure 3 outlines the different facets of the role of law in industrial relations and depicts the '*what*' and '*how*' as well as the underlying approach ('*why*').

Figure 3: The role of law in industrial relations



PART 3: COLLECTIVE BARGAINING IN IRISH VOLUNTARISM

1. Definition of Collective Bargaining in Irish Voluntarism

The process of collective bargaining has shaped Ireland's economy and society, particularly since the end of the Second World War (Wallace et al., 2013, p. 301). In what follows, collective bargaining will be defined and its purpose explained.

1.1 The Definition of Collective Bargaining

The Industrial Relations (Amendment) Act 2015 (2015 Act) legally defined collective bargaining in Ireland for the first time:

> For the purposes of this Act, '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.

The definition is based on the International Labour Organization's *Collective Bargaining Convention, 1981 (No. 154)* which transnationally defines collective bargaining as

> all negotiations which take place between an employer(s) or an employer organization(s), on the one hand, and workers' organization(s) on the other, for (a) determining working conditions and terms of employment; (b) regulating relations between employers and workers; (c) regulating relations between employer(s) or an employer organization(s) and workers' organization(s).

Collective bargaining between unions and employers and their representatives in Irish industrial relations hence regulates the terms and conditions of employment. Negotiations are conducted with the aim of reaching an agreement. However, this process happens on a voluntary basis and potentially results in non-binding agreements. Free collective bargaining is deeply interwoven in the voluntarist approach of Irish industrial relations.

1.2 The Purpose of Collective Bargaining

Free collective bargaining is an interplay between conflict and cooperation, between asserting interests and achieving compromise. Where terms and conditions of employment can be regulated sufficiently by collective bargaining, statutory law should not intervene in labour relations (Kahn-Freund, 1977, pp. 24–25). Through its flexible character, collective bargaining can create both stability and adaptability (Wallace et al., 2020, p. 4) at the same time and is therefore a powerful means that particularly suits fast-

moving industrial relations. Being more flexible than the law, it can react rapidly to economic changes or crisis situations.

Collective bargaining, when effective and successful, also lowers the need for judicial intervention; the growth and significance of employment law are restricted (Kahn-Freund, 1977, pp. 22, 25). Collective bargaining is the core process of industrial relations which can be supported by additional procedures, for example, legal or institutional. However, the interaction of procedures with each other and their general balance underlies changes resulting from cultural, geographic, historical, economic and political factors which shape the ratio between legal regulation and collective bargaining (Kahn-Freund, 1977, p. 38).

Conflict is inherent in industrial relations and materialises, among other things, in the form of collective bargaining. The fact that the employers' and the employees' sides share a common interest in collective bargaining does not exclude the need for conflict. Both want to enforce their own objectives and use the opportunity to bring their arguments to the table to obtain legitimation. Also, both sides want 'to give effect to their legitimate expectations such as the planning of production or (…) good and stable working conditions' (Kahn-Freund, 1977, p. 51). To a certain extent, trust and mutual respect must also be a feature of collective bargaining. Here, the legal principle *pacta sunt servanda* can be applied by analogy, which according to Kahn-Freund (1977, p. 23) means that '(c)ontractual promises, however informal, must be kept'.

1.3 Collective Bargaining and Pluralism

When examining industrial relations dynamics, we can distinguish between unitarist and pluralist approaches (first described by Fox, 1966). Both concepts differ in their approach to the balance of power and the inevitability of conflict in labour relations.

According to Wallace et al. (2020, p. 4) *unitarism* is the assumption that 'all employment units are, or at least should be, cohesive and harmonious with a total commitment to the attainment of a common goal'. Therefore, conflict should be avoided and by this means the harmony between the industrial relations actors may be kept. In contrast, *pluralism* recognises that society consists of many individuals and interest groups and sees conflict as inherent and inevitable in industrial relations (Wallace et al., 2020, p. 4). However, the authors state that conflict can create stability. In pluralism, conflict is seen as part of reality. Rather than being unhelpful, conflict can be constructive as it creates information

exchange, transparency and thereby efficiency. In pluralism, conflict is seen as part of the way to the solution. It does not contradict the existence of a common goal, such as a stable and well-functioning economy.

While Fox (1966, 1973, 1974) claims that unitarism and pluralism are often difficult to distinguish or can be connected with each other, he ultimately recognises that conflict is inherent in industrial relations. Problematically, the unitarist approach by definition neglects the significance of conflict. It thereby denies that conflict is a reality in industrial relations and inherent in it, and thus overlooks its potential to foster constructive and efficient negotiations.

In fact, conflict should be seen rather as an important procedure that can lead to legitimate and sustainable results. Procedural justice can be created in the process of conflict, whether legally regulated, institutionalised or neither. As the concept of pluralism values dialogue and conflict as a process that leads to efficiency and legitimate outcomes, it is reasonable to associate it with the concept of procedural justice, mentioned in Chapter 2, Part 2 and to apply the pluralist approach to the process of collective bargaining that constitutes a dynamic of conflict and cooperation by its very nature.

2. The Collective Bargaining Parties in Ireland

2.1 Trade Union and Employer Approaches to Collective Bargaining

2.1.1 Union Approach

A trade union has historically been described as ‘a continuous association of wage earners for the purpose of maintaining and improving the conditions of their employment’ (Webb and Webb, 1894). The unions’ ultimate goal is to improve or uphold the existing conditions of employment on behalf of the employees (Webb and Webb, 1920, p.1). According to Wallace et al. (2020, pp. 53–54) ‘(w)orkers believed that they would have more bargaining power to improve their conditions by acting together than by acting individually’. The authors claim that unions are perceived as the most effective collective means to oppose the employers’ side. As D’Art (2020, p. 84) puts it, workers join unions ‘to deploy their collective strength’ and to have a certain impact on industrial relations processes and their actual working lives. Unions use collective strength to compensate for the imbalance of power that workers experience within the formal hierarchy of their work environment (Daniel and McIntosh, 1972, p. 112). Collectivism is the source of

unions' power in labour relations and at the same time their legitimation. According to Casey (1972), the unions' *raison d'être* is the expression of collective interests in the form of collective bargaining. According to D'Art (2020, p. 96) workers join together in unions with the aim of exercising some control over employers' power. In the case of conflict escalation, industrial action, such as strikes, constitutes a strong tool and is an expression of negotiating power that can put pressure on the employers' side (Wallace et al., 2020, p. 54).

In the Irish private sector, the biggest union is the Services, Industrial, Professional and Technical Union (SIPTU). To represent unions nationwide and at the EU level, the Irish Congress of Trade Unions (ICTU) exists as a federation. Unions act within the framework of Irish voluntarism and are exposed to current challenges such as the collapse of social partnership, the dominance of neoliberalism or falling union density. This will be dealt with further in what follows. However, as stated in Chapter 2, Part 1, unions have traditionally supported voluntarism and 'legal abstentionism'.

2.1.2 Employer Approach

According to Wallace et al. (2020, p. 76), the employers' primary goal is to maximise efficiency and generate profits to satisfy owners and stakeholders. The authors state that in order to achieve these goals, the management organises factors of production such as labour.

The Irish federation of employers is the Irish Business and Employers Confederation (IBEC). Irish employers and their representatives have traditionally supported voluntarism and 'legal abstentionism'. However, while some actors on the employers' side see collective bargaining as contributing to democracy, some rather see it as interfering with the free market (Wallace et al., 2013, p. 301).

2.2 The Role of the State: Legislature and Judiciary

The role of the state with regard to collective bargaining in Ireland has traditionally followed the voluntarist approach of 'providing the ring' in which negotiations can take place (Wedderburn, 1986). Hence, the role of the state has traditionally been limited to providing a basis for unions and employers and their associations to collectively bargain freely. According to Horgan (1987, p. 168) the policy of the Irish state is traditionally 'supportive of trade unions and the concept of collective bargaining'.

Ireland is a democratic, independent and sovereign state (Doolan, 2011, p. 9). It incorporates the separation of powers between legislature, judiciary and executive. The state makes law under the Irish Constitution *Bunreacht na hÉireann 1937.* In what follows, Ireland's legislature and judiciary will be described further.

2.2.1 Legislature

The Irish parliament (the *Oireachtas*) is the country's legislator. It can make law in the form of superior legislation that is directly enacted by parliament and delegated legislation made by institutions legitimated to do so by an Act (Faulkner, 2018, pp. 1–2). By means of the legislature, the state can intervene in industrial relations. It can intervene either by means of individual labour law (for example, the Unfair Dismissals Act 1977) that aims to protect the individual in the relationship between employer and employee or by collective labour law (for example, the Industrial Relations Acts) which concern industrial relations and the relationship between unions and employers and their representatives. According to Doolan (2011, p. 24), the legislature is Ireland's most important source of law and is subject to Irish constitutional and European law.

2.2.2 Judiciary

Irelands judiciary is based on the *common law*. Common law is judge-made law and consists of court decisions (Faulkner, 2018, p. 5). As Doolan puts it (2011, p. 2), it is the old unwritten law of England that 'became embodied in a wide variety of judicial decisions'. Over the course of time it evolved into judge-made law in contrast to parliamentary law. As judge Gavan Duffy J states with regard to the Irish law system in *Cook v Carroll [1945] I.R. 515*: 'The common law is an integral portion of our jurisprudence.'

In Ireland, the most important and superior courts that are relevant for the topic at hand are the High Court and the Supreme Court. In their jurisdiction they set precedents, create, interpret and develop the law. According to Faulkner (2018, p. 5) '(t)he new decision will bind future courts under the principle of *stare decisis'*. The High and Supreme Court even have the power to declare statute law unconstitutional (Doolan, 2011, p. 25). Judgments of superior courts are binding on inferior courts. Though it is important to stress that the Supreme Court is not bound by its own prior judgments (*The State* (*Quinn) v Ryan [1965] IR 70*). This allows the Constitution to be flexible and adapt to changing times and

circumstances. However, the court will not depart from previous decisions unless for compelling reasons (Doolan, 2011, p. 63).

The role and origins of common law in industrial relations were inter alia at issue in a recent and landmark Irish Supreme Court judgment in *H.A. O'Neil Limited -v- Unite the Union & ors [2024] IESC 8* (*Unite* case*).*

In this case, the Supreme Court ruled that the High Court was mistaken in its former judgment granting an injunction restraining union members from taking industrial action. Where legal procedures had been followed correctly, legislation would provide an 'absolute bar' for courts in terms of granting injunctions restraining industrial action. With regard to the common law, the Supreme Court outlined its approach to trade unions and industrial relations in Ireland. It dealt with the common law system and the underlying mindset in terms of the perception of trade unions. It stated that in order to understand the law it is necessary to understand the development of common and statutory law since the nineteenth century. It explained that 'during the 19th century UK governments and courts were prominently representative of interests hostile to organised labour, and what was described as "[a] legal game of battledore and shuttlecock developed". Time and again, the UK courts pronounced on the law in a manner hostile to trade unions, and "repeatedly trade unions pressurised governments to change the law to remove the effect of a judicial decision only to see their success frustrated and undermined by a subsequent legal decision"' (para. 22).

The Supreme Court emphasised that originally, 'the common law treated trade union activity, in particular industrial action, as an unlawful and criminal combination' (para. 23). Even the 'law of tort had recognised a tort of conspiracy in relation to trade disputes and liability for union officials for inducing breach of contract of employment and of commercial contracts' (para. 24). Only the Trade Disputes Act 1906 granted certain immunities for unions and their members, but in theory, actions remained wrongful at common law with exceptions made in certain circumstances (para. 27).

As the court stressed:

> It is true that both the 1906 and 1990 Acts are framed as providing immunities from actions, principally for tort, against unions and their members. But it must be recognised that those torts were created by the Victorian common law in response to the activities of trade unions, which were regarded as criminal and tortious. (para. 57)

The Supreme Court explained that the common law sees the employment relation as the exercise of freedom of contract between the actors and therefore ignores the inequality of bargaining power that can be balanced by collectivism exercised in the form of a trade union with the aim of rebalancing the power between employees and employers by means of collective bargaining and collective action. In this judgement, the Supreme Court critically examined the traditional approach of the common law being hostile towards Irish trade unions and at the same time disavowed from it.

2.2.3 The Labour Court: 'The Heart of Voluntarism'

Considered to be 'the heart of voluntarism', the Labour Court has a special role in Irish industrial relations (Faulkner, 2018, p. 44). It is, like the civil courts, an expression of the state's power and nevertheless different. Unions and employers and their representatives can aim for a resolution of their conflict both by means of the process of collective bargaining and via the Labour Court (Wallace et al., 2020, p. 105). According to Duffy (2010, p. 69), the court is 'a mix of arbitrator, facilitator and inquisitor. It is a tribunal with specialist expertise in a wide area including labour law, labour relations, social and political policy.'

The Labour Court is not a court of law. As stated by Wallace et al. (2020, p. 104) it 'is not part of the civil courts system, it does not issue judgments and it is not staffed by judges but by people with extensive experience in industrial relations and employment law'. The Labour Court issues recommendations rather than binding determinations. Hence it uses methods of soft regulation (Forde 1991; Teague and Thomas, 2008; von Prondzynski, 1998). The industrial relations actors are free to accept or refuse the court's recommendation as it has no legal force (Wallace et al., 2020, p. 105). Although its recommendations are not binding, the authors state that it can have consequences for the parties or their future negotiations if they reject them, as rejection can bring about negative publicity or the prolongation of disputes.

However, the Labour Court functions within the Irish court system and therefore there are interactions with other courts, such as the High Court or the Supreme Court.

The Labour Court was established under the Industrial Relations Act 1946 (1946 Act) as an expression of the voluntarist system. As stated by Wallace et al. (2020, p. 104), the original objective of the Labour Court was to promote harmonious industrial relations and 'for this purpose to establish machinery…for the prevention of trade disputes'.

In due course, the court's functions evolved and while it did not determine legal rights at the beginning, it came to decide cases in labour law in the first instance, as well as an appellate body (Wallace et al., 2020, p. 104).

According to Wallace et al. (2020, p. 104) '(t)he Labour Court aims to carry out its functions in a fast, fair and inexpensive way'. Its industrial relations functions include the investigation of trade disputes under the Industrial Relations Acts 1946 to 2015 or the registration of employment agreements.

The Labour Court as an institution comprises a chair, four deputy chairs and eight ordinary members who are divided evenly between employers' and workers' representatives (Wallace et al., 2020, p. 104). ICTU and IBEC appoint the members who are then appointed by the Minister for Business, Enterprise and Innovation. According to Wallace et al. (2020, p. 104) while being representatives for the workers' or employers' sides, the ordinary members have to act independently while on the court.

As an expression of the voluntarist approach, the Labour Court depends strongly on the acceptance and respect of the labour relations parties with regard to the institution and its non-binding recommendations. Traditionally, the Labour Court is highly respected among industrial relations actors. However, occasionally, the Labour Court has been called anti-employer, anti-union or anti-government (Wallace et al, 2020, p. 107). However, these opinions do not call it into question as an institution but only concern the effectiveness and acceptability of Labour Court recommendations (Wallace et al., 2020; Forde, 1991).

Alongside the Labour Court, the Irish state also established the Workplace Relations Commission (WRC) to promote good workplace relations and therefore act as a conciliation body.

2.3 The Irish Constitution

Trade unions, employers and their representatives and the state, act on the basis of the Irish Constitution. In 1937, the Irish Constitution (*Bunreacht na hÉireann*) was adopted by the Irish people as the country's basic legal document. It reflects the values of Irish society (Doolan, 2011, p. 8).

The Irish Constitution is to be seen in light of human rights. As Doolan (2011, p. 68) puts it: 'These constitutional rights are now, by virtue of the European Convention on Human

Rights Act 2003 (…), augmented by the bundle of rights set out in the European Convention on Human Rights (ECHR).'

In the Supreme Court decision *In re Article 26 and the Regulation of Information (Services outside the State for the Termination of Pregnancies) Bill 1995 [1995] 1 IR 1,* judge Hamilton CJ stated: 'The courts in interpreting the Constitution and in ascertaining and declaring what are the personal rights which are guaranteed by the Constitution and in determining, where necessary, the rights which are superior and antecedent to positive law or which are imprescriptible or inalienable, must (…) interpret them in accordance with their ideas of prudence, justice and charity.'

The judgment of the Irish Supreme Court in the case *McGee v Attorney General [1974] IR 284* outlined that the mere existence of the Constitution confirms the existence of a superordinated natural law that embodies human values and is superior to all law created by men. Judge Walsh J also pointed out that the Constitution is flexible in nature and able to adapt to changing values in Irish society. The judge stressed that according to the preamble of the Constitution the people gave themselves the Constitution with the aim of promoting the common good and securing individual security and freedom. However, the court states: 'It is but natural that from time to time the prevailing ideas of these virtues must be conditioned by the passage of time.'

The Irish Constitution guarantees the right of *freedom of association* which will be further explained below (4.3).

3. Recent Developments Influencing Collective Bargaining in Ireland

3.1 Developments at EU Level

The most recent and striking development at EU level in terms of impacting collective bargaining in Ireland is the *Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union* (EU Minimum Wage Directive; Appendix A).

The aim of the EU Minimum Wage Directive is to improve working and living conditions in EU countries by establishing frameworks around minimum wages and the promotion of collective bargaining (EUR-Lex, 2025).

Regarding the issue of collective bargaining, the Directive contains a provision to increase collective bargaining coverage where national collective bargaining coverage is

under 80 per cent. Where the coverage rate is below the threshold of 80 per cent, member states should provide for enabling conditions, either by law or after consulting social partners, and establish an action plan to increase that coverage, as Article 4.2. of the Directive states:

> In addition, each Member State in which the collective bargaining coverage rate is less than a threshold of 80% shall provide for a framework of enabling conditions for collective bargaining, either by law after consulting the social partners or by agreement with them. Such a Member State shall also establish an action plan to promote collective bargaining. The Member State shall establish such an action plan after consulting the social partners or by agreement with the social partners, or, following a joint request by the social partners, as agreed between the social partners. The action plan shall set out a clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage, in full respect for the autonomy of the social partners.

The Directive thereby obliges member states to take measures to strengthen collective bargaining and the social partners' capacities to engage in it. However, the measures taken should suit the industrial relations system of each individual EU country. The autonomy of the social partners should not be affected.

The EU Minimum Wage Directive was meant to be transposed into national law by 15 November 2024. Ireland has issued an action plan to promote collective bargaining at the time of the submission of this study (November 2025).

3.2 National Level

3.2.1 The Imbalance of Power: A Challenge to the Traditional Concept of Voluntarism

Taking as a basis the concept of Varieties of Capitalism (Hall and Soskice, 2001), Irish voluntarism takes place in a liberal market economy. Because of its voluntarist approach and the lack of legal regulation at its core, it faces a wide range of challenges. As Wallace et al. (2020, p. 13) state: 'Even in democratic societies, the state reflects the differences in power between capital and labour, and successive Irish governments have upheld the established norms, values and culture of liberal capitalism.'

Voluntarism in the sense of industrial democracy based on a balance of power and procedural justice has been challenged by various developments in liberal capitalism that have impacted the balance of power between the industrial relations actors in Ireland. According to Gibbons (2015, p. 473): 'An overview of Ireland's industrial relations is

provided with an emphasis on two factors: Irish trade unions' 100 year struggle for union recognition and the rise and fall of Ireland's social partnership system, a series of nationally negotiated collective wage agreements.'

The growing imbalance of power in industrial relations has been increasing in particular since the **end of social partnership** in 2010. Following the traditional approach of Irish voluntarism, which involves minimum state legal intervention, social partnership talks took place from 1987 to 2010 (McDonough and Dundon, 2010, p. 544). The parties dealt with various aspects of the economy and aimed to achieve satisfactory results for both sides of the labour conflict. The concluded pacts were not legally binding, but the industrial relations actors committed to them voluntarily. Social partnership was a consensus based system (Doherty, 2013, p. 173). The 'mindset' of voluntarism and social partnership was present at this time. A high level of respect for the concept of voluntarism and its institutions, as well as for the resulting agreements was established in the Irish economy. However, social partnership collapsed in 2010 because of the global economic crisis (McDonough and Dundon, 2010, p. 544).

Neoliberalist structures had been proliferating in Ireland since the 1980s, intensified by the arrival of non-unionised multinational US companies in the country (Cullinane and Dobbins, 2014, p. 54). The Irish social partnership model had traditionally protected the employees' side from global neoliberal structures, at least to some extent, but in this period of recession, voluntarism could no longer perform that function (McDonough and Dundon, 2010, pp. 553–554). The crash of social partnership and therefore the disappearance of the protective shield for workers in a highly liberalised market economy caused a power shift between the Irish industrial relations actors. As a result of the economic crisis, the influence of collective bargaining in the private sector decreased (Wallace et al., 2013, p. 301).

According to Lehndorff (2012), the dynamics of the relationship between the Irish industrial relations actors are strongly connected to global capitalism. As already stated, Ireland increasingly incorporated global neoliberal structures (McDonough and Dundon, 2010, p. 544). One important reason for this is Ireland's dependence on foreign direct investment (FDI). In Ireland, FDI was 255% of GDP at the end of 2023 which is about four times the EU average (Central Statistics Office, 2025). According to Gunnigle et al. (2013, p. 215), FDI has played a key role in the success of the Irish economy and its

increasing global competitiveness. As Gunnigle et al. (2013, p. 215) put it with reference to Barry (2007) and Rios-Morales and Brennan (2009): 'The success of this policy is manifest in the large numbers of MNCs located there and its status as one of the world's most FDI-intensive economies'. Ireland hosts some of the leading global companies in growing sectors. According to Lavelle et al. (2010, p. 397), the country's most significant source of FDI is the United States. In 2023, €897bn of the inward investment positions in Ireland were of US origin, constituting 69% of the total (Central Statistics Office, 2025).

Multinational companies (MNCs) are of considerable importance for the Irish economy. However, they tend to be non-unionised (McDonough and Dundon, 2010, p. 556).

A large-scale representative survey conducted by Gunnigle, Lavelle and McDonnell in 2007 found that about half of the MNCs coming from the US did not recognise trade unions when opening new sites in Ireland. As Lavelle (2008) states, findings from data of around 260 MNCs show that Irish, UK and other European MNCs would rather recognise trade unions than US American MNCs. The phenomenon of immigrating US-owned companies avoiding unions has been observed since the 1970s (Gunnigle et al., 2001; 2019). According to Gunnigle et al. (2005; 2009) US-owned MNCs would rather develop professional forms of human resource management. Thus, they try to substitute unions (Dundon et al., 2017) and attenuate their significance.

The increase in union avoidance has caused a diminution of collective bargaining and conflict resolution at industrial relations level (Wallace et al., 2020, p. 177). According to Cullinane and Dundon (2012), unions are also unable to establish a foothold in the workplace, as they have been weakened by an increasingly strong liberal market and employers' union avoidance.

Employers now negotiate with unions more aggressively to achieve their objectives than under the social partnership model (McDonough and Dundon, 2010, p. 556). Union avoidance and antagonism constitute a challenge to the balance of power within the traditional voluntarist approach.

A **decline in union density** has been observed in many countries in recent decades (O'Sullivan et al., 2015, p. 222). However, for Ireland, having a voluntarist system, it has become particularly problematic for unions and their bargaining power (Dobbins et al., 2020, p. 76). According to Walsh (2018), union density in the private sector declined

from 27 to 14 per cent from 2003 to 2017. In the changing market economy, it has been difficult for unions to break into new and growing sectors of the Irish economy (Fulton, 2021). Union density cannot keep up with increasing employment, but the younger generation have the lowest union density (Wallace et al., 2020, p. 61). This constitutes a problem with regard to the unions' future capacities. In the private sector, the impact of collective bargaining decreased not only because of the economic crisis, but also due to the decline in union density (Wallace et al., 2013, p. 301). Weaker union bargaining power has an impact on the balance of power between the industrial relations actors within Irish voluntarism.

In this context, Kerr (2017, p. 894) raises the question of the extent to which **voluntarism still exists** and which factors determine its existence. 'Legal abstentionism' is key to how voluntarism has traditionally been perceived, as stated in Chapter 2, Part 1. Although the concept of voluntarism officially still exists in Irish industrial relations, a variety of authors question its existence given the increasing intensity of state legal intervention, among others Doherty (2008), King (2006) and Teague (2005).

Individual labour law has been increasing in Ireland. At first glance, it might not be evident why individual labour law would have an impact on collective bargaining and the underlying power balance, as it deals with the rights of individual employees and not with the concerns of the collective. However, as Wallace et al. (2020, p. 118) state: 'The growth in employment legislation and the decline in union density have contributed to changes in how workplace conflict is dealt with. Conflict has shifted from collective forms to individual forms, with people increasingly attempting to exercise their rights through employment law and legal cases rather than through industrial action.' A number of individual employment rights have been enacted in recent times, deriving from the national as well as the European level.

National legal regulation is not only, but increasingly coming from the **European Union (EU)**. According to Faulkner (2018, p. 3) '(o)ne source of employment law that has become increasingly important in recent years is European law'. As the author states, a wide range of labour law that has been enacted in recent years has been based on or has been pushed forward by European law. In these cases, Ireland is obliged to juridify certain aspects of labour relations. Examples of this include:

- the Temporary Agency Work Act (2012) based on the EU Directive on Temporary Agency Work 2008/104/EC;
- the Organisation of Working Time Act (1997) based on EU Directive 93/104/EC on the organisation of working time;
- the Protection of Employees (Part-Time Work) Act 2001 based on the EU Framework Directive on Part-Time Work;
- the Employment (Miscellaneous Provisions) Act 2018 based on the Transparent and Predictable Working Conditions Act (2019/1152).

Over time, Ireland has enacted a large amount of individual labour law based on EU provisions. The EU has therefore had a significant and inevitable impact on the national legal landscape.

3.2.2 The New 'Social Dialogue'

One development that is relevant to collective bargaining in Ireland is the new 'social dialogue' between industrial relations actors. In 2016, the government announced a new form of social dialogue between Irish unions and employers, called the Labour Employer Economic Forum (LEEF). However, Wall (2016) mentions that the former Minister for Public Expenditure and Reform, Paschal Donohoe 'stressed that the move did not represent a return to the former model of social partnership under which employers, unions and other groups enjoyed considerable influence over pay and other areas of public policy' and LEEF was rather meant to be a forum for exchanging views. It is questionable what this means, who benefits from the new 'social dialogue' and how it impacts the balance of power in Irish voluntarism.

3.2.3 Collective Labour Law: The Industrial Relations (Amendment) Act 2015

Collective labour law has shaped collective bargaining in Irish industrial relations, particularly the Industrial Relations Acts, which will be examined in greater detail in Chapter 4, Part 3 of this study.

The most recent Industrial Relations Act with a significant impact on Irish collective bargaining is the Industrial Relations (Amendment) Act 2015 (2015 Act; Appendix B).

The 2015 Act introduced a definition of the term 'collective bargaining' to Irish industrial relations. It also determined that 'excepted bodies', with whom an employer conducts

collective bargaining instead of dealing with a trade union, have to be independent from the employer and not under its control:

> **Collective bargaining**
>
> 1A. For the purposes of this Act, '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.
>
> **Excepted body to which this Act applies**
>
> 1B. For the purposes of this Act, 'excepted body to which this Act applies' means a body that is independent and not under the domination and control of an employer or trade union of employers, all the members of which body are employed by the same employer and which carries on engagements or negotiations with the object of reaching agreement regarding the wages or other conditions of employment of its own members (but of no other employees). (Part 3, 27. of the 2015 Act)

The 2015 Act was enacted in response to the *Ryanair* case (*Ryanair v The Labour Court | [2007] IESC 6)* in which Ryanair had claimed to have conducted collective bargaining with an excepted body that was under the control of the employer.

The 2015 Act as well as the *Ryanair* case will be examined further in Chapter 4, Part 3 of this study.

3.2.4 Collective Bargaining at Sectoral Level

In Ireland, collective bargaining occurs mainly at company level. However, at the sectoral level, there are different forms of collective bargaining (Wallace et al., 2020, p. 112).

Registered Employment Agreements (REAs) are collective agreements between one or various unions and one or various employers or their associations. REAs deal with the remuneration or conditions of employment of workers of all classes, types or groups. The agreement only binds the parties to the agreement. Historically, REAs were sector-wide agreements, but the 2015 Act narrowed their focus. Their previous function was taken over by SEOs as introduced by the 2015 Act (Wallace et al., 2020, pp. 114–115).

Joint Labour Committees (JLCs) are statutory bodies that provide a process for fixing statutory minimum rates of pay and conditions of employment for particular workers in particular sectors. They were established under the 1946 Act. JLCs protect vulnerable workers in environments with low-pay and low unionisation, for example, agricultural

workers or contract cleaning (Wallace et al., 2020, p. 112). JLCs determine legally binding minimum rates of pay and conditions of employment for workers in a particular sector by Employment Regulation Orders (EROs). EROs are instruments 'drawn up by a Joint Labour Committee (JLC), adopted by the Labour Court, and given statutory effect by the Minister for Enterprise, Trade and Employment' (Workplace Relations Commission, 2020).

A wide range of topics and the interests of both parties must be considered when issuing an ERO.

Sectoral Employment Orders (SEOs) were introduced by the 2015 Act. The concept of SEOs replaced the former REAs, established under the 1946 Act (Arthur Cox, 2020). As stated by Wallace et al. (2020, p. 115) 'SEOs are documents setting legally binding minimum pay and conditions for a particular class, type or group in an economic sector'. A SEO is a statutory instrument and a collective agreement (FitzGerald, 2020) and can hence be seen as a hybrid between collective bargaining and statutory intervention. The minimum pay and conditions concluded in the SEO apply to the whole sector. SEOs exist for example in the construction sector or the mechanical engineering sector. If representative of the workers or employers in the relevant sector, the employees' or employers' side can ask the Labour Court to review the working conditions in a particular economic sector and the Court then makes a recommendation to the minister about setting conditions in a specific sector (Wallace et al., 2020, p. 115). The SEO must then be approved by the minister as well as by the *Oireachtas.* SEOs resisted challenges to their constitutionality (*NECI v The Labour Court, The Minister for Business, Enterprise and Innovation, Ireland and The Attorney General*) and the concept remains valid. This will be further examined in Chapter 4, Part 3 of this study.

3.2.5 The Final Report of the LEEF High Level Working Group on Collective Bargaining

The Final Report of the LEEF High Level Working Group on Collective Bargaining (LEEF Report, see Appendix C), chaired by Professor Michael Doherty, was set up in March 2021 to review collective bargaining and the industrial relations landscape in Ireland. The High Level Working Group aimed to review the following aspects (LEEF Report, p. 2):

- Examine the issue of trade union recognition and the implications of same for collective bargaining processes.
- Examine the adequacy of the workplace relations framework supporting the conduct and determination of pay and conditions of employment, having regard to the legal, economic, and social conditions in which it operates.
- Consider the legal and constitutional impediments that may exist in the reform of the current systems. (…).
- Review the current statutory wage setting mechanisms and, where appropriate, make recommendations for reform.

Members included representatives from the employers' side (IBEC, CIF), the unions' side (SIPTU, ICTU, Fórsa) and some government nominees, among them Professor Bill Roche and Mr John Shaw from the Department of the Taoiseach.

According to the report, the High Level Working Group 'was tasked with facilitating the examination of the adequacy of the workplace relations framework in supporting the conduct and determination of pay and conditions of employment having regard to the legal, economic, and social conditions in which this framework operates' (LEEF Report, p. 4). It acknowledged that quick responses to the COVID-19-crisis were possible because of active and meaningful social dialogue through LEEF.

During its assessment, the High Level Working Group was aware of the significance of the Environmental, Social and Governance (ESG) agenda and the growing importance of the acknowledgement that businesses serve not only shareholders but various stakeholders, including customers, employees, communities, the environment and suppliers (LEEF Report, p. 4). As the report outlines, this approach 'clearly envisages that business leaders and individual companies engage with the needs of their employees as they seek to continue to grow the economy in a sustainable manner' (LEEF Report, p. 4).

The group was also asked to examine the issue of union recognition and its implications for Irish collective bargaining, however, it concluded that it could not describe its constitutional position precisely in this regard (LEEF Report, p. 5).

The group also took into account Ireland's obligations under the EU Minimum Wage Directive, with regard to the thereby enhanced role of collective bargaining and the aim of providing an action plan and frameworks for increasing collective bargaining coverage (LEEF Report, pp. 5–6).

Furthermore, it reviewed SEOs and JLCs as Ireland under EU obligations 'would need to encourage and support bargaining at sectoral level' (LEEF Report, p. 6). The group identified the problem that currently only a few JLCs function well because of employer disengagement. However, it stressed that JLCs could be an 'effective, evolving, and flexible system of sectoral regulation, that can contribute to the progressive development of different sectors of the economy, support more sustainable and inclusive high-quality employment, and also help to address other employment relations policy challenges' (LEEF Report, p. 7).

The High Level Working Group states that in its assessment it did not take into account the issue of union representatives' access to workers. It further outlines (LEEF Report, p. 8):

> however, the Group also emphasises that this report, and the recommendations contained herein, should not be considered as the end of a process, but as one element of what will be ongoing efforts to improve the system of industrial relations in Ireland, respecting the autonomy of the social partners, and to continue to build relationships of trust, confidence, and mutual respect between employers and workers and their representatives at all levels (national, sectoral, and local). These efforts should be focused on attempting to resolve any differences through structured engagement between the parties, in line with Ireland's voluntarist tradition, rather than through recourse to the adversarial common law system.

The group thereby stressed the autonomy of the industrial relations actors in Irish voluntarism and the significance of trust and respect between them.

The LEEF Report was published in 2022 and is a remarkable assessment of Irish industrial relations and collective bargaining in light of the provisions of the EU Minimum Wage Directive.

4. Union Recognition and the Constitution

4.1 Voluntarism and Union Recognition

The question of the extent to which voluntarism still exists in Irish industrial relations and what the role of the state and the law is in this regard is also related to the 1937 Irish Constitution and union recognition. Constitutional union recognition means that employers are obliged to recognise and negotiate with trade unions. It does not comprise a legal obligation to conclude an agreement or to agree on a certain outcome (D'Art, 2020, p. 107). Union recognition was traditionally implemented by voluntary means and could

be brought to the Labour Court for the purpose of a non-binding recommendation on it, starting with the Industrial Relations Act 1969 (1969 Act) (Dobbins et al., 2020, p. 76).

4.2 Relevance to the Balance of Power

Constitutional rights constitute a foundation for the balance of power between industrial relations actors. The constitutionally guaranteed *freedom of association* serves a social purpose, which is to achieve a certain balance with regard to the bargaining power between the industrial relations actors (von Prondzynski, 1987, p. 225).

4.3 The Constitutional Right to 'Freedom of Association'

The Irish Constitution guarantees the right of *freedom of association*. Freedom of association means the right of all people to associate or not associate with other people for a certain purpose (McBride, 2005, p. 18). Article 40.6.1(iii)° of the Irish Constitution therefore includes 'the right of citizens to form associations and unions' and allows for legal regulations being enacted to regulate and control the public interest in the effectiveness of this right. The right of association is a 'hallmark of a democratic state', as stressed by D' Art (2020, p. 83) with reference to Article 11 of the European Convention on Human Rights.

However, the right to form or join a trade union is claimed not to contain an obligation on the part of the employer to recognise or negotiate with a union (see *Abbott & Whelan v ITGWU & Southern Health Board [1982] 1 JISLL 56*). Hogan and Whyte (2003, p. 1793) claim that the Irish Constitution contains a 'double-edged sword' as it guarantees the right to form a trade union but – paradoxically – jurisprudence on union recognition claims that there is no obligation on employers to recognise trade unions for the purpose of collective bargaining.

4.4 The Controversy on Union Recognition

This approach became particularly evident in the case *Abbott & Whelan v ITGWU & Southern Health Board [1982] 1 JISLL 56* and was affirmed by the case *Association of General Medical Practitioners Ltd v Minister for Health [1995] 2 ILRM 481.* In the latter, judge O'Hanlon J stated that he did not see any obligation on the part of employers to consult or negotiate with a union. Jurisprudence made it clear that recognition would remain a voluntary option (Wallace et al., 2013, p. 39). In 1996, the *Constitutional Review Group* (p. 316, para. 3) concluded that obliging an employer to recognise a trade union

could contradict the voluntary nature of Irish industrial relations. This view was further enhanced in the *Ryanair* case. Mr Justice Hugh Geoghegan claimed in the Irish Supreme Court's decision that it was 'not in dispute that as a matter of law Ryanair is perfectly entitled not to deal with trade unions'. Moreover, no 'law [could] be passed compelling it to do so'.

However, D'Art and Turner (2007) state with regard to the *Ryanair* case judgment that in this case 'Ireland would occupy a relatively unique position among the western democracies'. According to Dobbins et al. (2020, p. 78) Ireland deviates from international norms by not providing a statutory form of union recognition. However, collective bargaining is the unions' *raison d'être* (Casey, 1972, p. 4). Joining a trade union without the right to be recognised by an employer leaves this constitutional right of *freedom of association* meaningless (Lynch, 1998, p. 227). D'Art (2020, p. 82) even raises the question of whether the constitutional guarantee of *freedom of association* or the right of workers to form independent trade unions would not inevitably involve 'a corresponding and implicit obligation on employers to recognise and negotiate with such organisations' and answers the question in the affirmative. The author draws attention to the original purpose of the constitutional *freedom of association*, which is the accumulation of power by employees to check and balance the employers' power in the labour market. As he puts it: 'Consequently, union recognition and collective bargaining constitute the practical realisation or consummation of freedom of association' (D'Art, 2020, p. 96).

Another consideration has always strongly influenced the Irish discussion on constitutional union recognition. The government already reviewed the issue during the period of social partnership. However, it was feared that mandatory union recognition would endanger FDI, particularly from US-American MNCs (Gunnigle et al., 2009).

5. Conclusion

Collective bargaining in Ireland takes place within the framework of pluralism and a specifically formed industrial relations landscape based on the voluntarist approach. Current developments influence collective bargaining in Ireland and constitute a challenge to the industrial relation actors, in particular trade unions, in terms of an increasing imbalance of power. This brings up the question of whether voluntarism still exists. Different attempts have been made and routes taken to rebalance power in

industrial relations, including the introduction of 'social dialogue' or the 2015 Act. The new EU Minimum Wage Directive and the corresponding LEEF Report on the future of Irish labour relations also express a desire and intention to strengthen collective bargaining. However, it remains unclear what approach to take and how effective it might be. Finally, the discussion on constitutional union recognition in Ireland remains unresolved and controversial, in particular with regard to Ireland's dependence on FDI and potentially union-rejecting MNCs.

PART 4: CONCLUSION, EVALUATION FRAMEWORK AND RESEARCH QUESTIONS

This chapter concludes that voluntarism is the traditional concept forming the basis of Irish industrial relations. It is traditionally described in terms of 'legal abstentionism'. Hence, the role of the state is traditionally seen as being limited to providing an arena for unions and employers and their representatives to interact without legally intervening into their relationship to regulate it. However, the concept of voluntarism must also be seen in connection with the balance of power as an underlying concept that enables it to function.

In the context of industrial relations, law should serve to regulate the balance of power between industrial relation actors, while at the same time guaranteeing their autonomy. In the legal sphere, the state can regulate the power through the legislature and the judiciary, based on the idea of procedural justice. Furthermore, it is regulated by the nation's constitution.

Collective bargaining in Ireland takes place within a pluralist and voluntarist system with the Labour Court at its core. The term 'collective bargaining' was defined most recently in the 2015 Act. However, the actors of voluntarist industrial relations take different approaches to it.

Recent developments at national, as well as at EU level have influenced collective bargaining in Ireland. As a result, an imbalance of power developed in collective bargaining and there is now a need to increase national collective bargaining coverage. In light of the new EU Minimum Wage Directive, the LEEF Report examined the Irish industrial relations landscape and its potential for improvement. In this context, the existence of constitutional union recognition under the *freedom of association* guaranteed by Article 40.6.1(iii)° of the Irish Constitution remains unclear and highly controversial.

This study therefore examines the following, as presented in *Table 1.*

Table 1: Evaluation framework

Criteria	**Sub criteria**	**Aims of the present study**	**Relation to Literature Review**
Criterion 1: The present meaning and future of Irish voluntarism	Definition of voluntarism	Analyse what voluntarism means and should mean in recent and future Irish industrial relations	Relates to: Chapter 2, Part 1
	Balance of power	Further analyse what challenges exist to the balance of power in Irish voluntarism and evaluate whether and how power can be rebalanced within the voluntarist sphere *('naturally', Figure 2).*	Relates to: Chapter 2, Part 1 and Part 3
	Future of voluntarism	Evaluate whether voluntarism still exists in Irish industrial relations If it no longer exists: deduce a suitable future concept	Relates to: Chapter 2, Part 1, Part 2 and Part 3
Criterion 2: The role of the state in Irish industrial relations	Legal means	Evaluate whether and how power can be rebalanced in the legal sphere *('artificially', Figure 2),* considering individual and	Relates to: Chapter 2, Part 1, Part 2 and Part 3

		collective labour law at both national and European level	
	Role of the Constitution	Evaluate whether constitutional union recognition in Ireland exists and its implications	Relates to: Chapter 2, Part 2 and Part 3
	Role of trust	Evaluate the role trust plays in Irish industrial relations	Relates to: Chapter 2, Part 2 and Part 3

The following research questions arise from the evaluation framework:

MAIN RESEARCH QUESTION:

What is the role of the state in the Irish voluntary industrial relations system?

Sub-questions:

1. What challenges exist to the balance of power in Irish industrial relations?
2. To what extent can power be rebalanced in the voluntarist sphere?
3. To what extent can power be rebalanced in the legal sphere?
4. Does constitutional trade union recognition exist and what implications does this have?
5. What role does trust play in Irish industrial relations?
6. Does voluntarism still exist in Irish industrial relations?
7. Is voluntarism and state legal intervention a contradiction in terms?
8. What could be a future concept for Irish industrial relations?

CHAPTER 3: RESEARCH METHODS

Chapter 3 describes the research methods used in this study.

Part 1 sets out the significance of the topic.

Part 2 outlines the research methods used for this study, as well as the researcher's philosophical approach.

Part 3 describes how the data was collected.

Part 4 explains how the data collected for this study was analysed.

Part 5 sets out the limitations of this study and examines the issue of data validity.

PART 1: SIGNIFICANCE OF THE TOPIC

Industrial relations are a key feature of democracy. In times in which neoliberal and authoritarian tendencies are in the ascendent, industrial democracy as a participatory process that allows workers to codetermine the course of the economy, and thereby their living conditions, constitutes an important feature of the constitutional state. As Sinzheimer put it in his *Labour Constitution Theory*, the economy is not a private, but a public good and there is a fundamental interest on the part of the state's citizens and the welfare state for it to function well and sustainably. The democratic state is legitimised only by its citizens, which is more than sufficient justification of the view that it should act solely in the public interest. The state is therefore a guarantor of the realisation of the citizens' will in a country's economy (Dukes, 2014, pp. 24–25). It plays at the same time an ancillary, as well as a leading role in industrial relations; it is constituted to serve the people and should govern and lead current affairs in their favour. The constitutional state therefore allows for a democratic representation of employers and workers, functioning as the expert in their affairs, they being democratically legitimated themselves. The state delegates democratic power to them by guaranteeing their autonomy.

The study of the role of the state in industrial relations is therefore highly important, even though this highly complex matter is difficult to evaluate. However, research is not a 'one-off' process but by its nature approaches complex matters in a slow, cumulative process and with contributions from many persons. It is a continuous process of discovery without a fixed beginning and end (Gummesson, 1991). This study aims to contribute to this process. Industrial relations are shaped by a variety of facets, sociological, economic and legal. Its dynamics may be evident, but also subtle. This study aims to take up this complexity and bring different facets of the general topic together to evaluate a new perspective on the topic of voluntarism and the role of the state in Irish industrial relations.

PART 2: RESEARCH METHODS

1. Research Methods

This research's methodological approach is based on a qualitative research design.

For this study, semi-structured interviews were conducted with key actors in Irish industrial relations (*primary data*). The researcher also conducted legal and documentary analyses (*secondary data*). She therefore used a multi-method qualitative approach.

Qualitative research 'studies participants' meanings and the relationships between them, using a variety of data collection techniques and analytical procedures, to develop a conceptual framework and theoretical contribution' (Saunders et al., 2019, p. 179). In comparison with quantitative research, it examines the perspectives of people with specific knowledge of certain phenomena; thus the data relates to a certain context and cannot be generalised (Lapan et al., 2012, p. 3). Furthermore, qualitative studies differ from quantitative studies by inferring meaning also from words and contexts, not only from numbers (Saunders et al., 2019, p. 179).

Which methodological approach best suits a study depends on the discipline and the research topic. This dissertation investigates industrial relations. As Kelly (1999, p. 1) states, methods and theories in the area of industrial relations are drawn from a variety of disciplines, including social sciences. Industrial relations, at the interface of sociological, economic and legal studies, are a complex area and the concept of voluntarism underlies the perceptions of a variety of stakeholders. The researcher therefore decided to use a qualitative research design to best cope with the complexity involved and draw valuable conclusions. According to Whitfield and Strauss (2008, p. 174) a qualitative research strategy is a good approach to an industrial relations study aiming to provide policy recommendations, which this study does. Taking the qualitative research approach made it possible to examine a range of variables and processes in a suitable and meaningful way. As a result, it was possible to gain some understanding of all facets of the relevant dynamics important for the issue at hand.

1.1 The Researcher's Personal Approach

The choice of qualitative research methods for this study is also based on the personal and professional experience of the researcher, who has worked for many years in the area

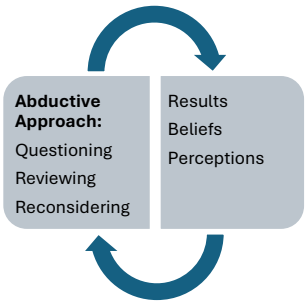
of collective labour law and industrial relations. It is a very diverse area, whose complexity can be tackled with the use of both qualitative methods and data, in particular coming from the key persons involved. The researcher is particularly fascinated by the topic of voluntarism in the Irish industrial relations system, in contrast to juridified systems, and perceives that voluntarism has considerable potential for effective and sustainable industrial relations in a rapidly changing world. Though the researcher has a legal background, she believes that industrial relations are substantially shaped by dynamics beyond the law and that all actors benefit if the conflicting labour relations parties take a constructive and respectful approach towards one another. Understanding voluntarism and the role of the state and the law in Irish industrial relations is thus of the utmost interest.

1.2 The Abductive Approach

An abductive approach has been taken to this research. This means that it does not develop from theory to data, as in a deductive approach, nor does it develop from data to theory, as in an inductive approach. As Suddaby (2006) puts it, the abductive approach combines the abovementioned approaches and develops bidirectionally. Saunders et al. (2019, p. 155) describe the abductive approach as follows. It starts with the observation of a certain state of affairs and then works out a suitable theory to explain it. This process occurs not only at the beginning of the study, but also during its course, for example, during data collection or in the course of writing. The abductive approach brings flexibility to the research project as information can be gathered at any time, which makes it necessary to question previous positions. The research may thus evolve and grow step by step instead of developing in a predictable or chronological fashion. During the whole evolution of the research, the abductive approach can be regarded as a cycle of thinking and rethinking by perennially questioning, reviewing and reconsidering current results, beliefs and perceptions.

Figure 4 depicts the abductive approach.

Figure 4: The abductive approach



This flexible approach enables the researcher 'to explore the phenomenon and identify and explain themes and patterns' (Saunders et al., 2019, p. 156). Transparency and objectivity are enhanced by questioning previous beliefs and outcomes, which confers more validity on the data and the results concluded from it.

2. Research Philosophy

According to Saunders et al. (2019, p. 130), the notion of a research philosophy 'refers to a system of beliefs and assumptions about the development of knowledge'. The pluralist approach to research philosophy acknowledges that there are different approaches to seeing things, but also that each unique perspective contributes to research in a certain field and constitutes a legitimate way of perceiving reality (Morgan, 2006). The researcher in this case even thinks that different philosophical approaches can be taken within one and the same study. This became evident during this research in the course of analysing data from socially highly complex interviews in comparison with rather fact-based legal documents. However, this study generally takes an approach that perceives reality as being subjective and takes an interpretivist approach to the analysis of data, which will be further explained in what follows.

2.1 Reality is Subjective

This dissertation is based on research on a topic with a very rich context and evaluated it at a deep level in order to do justice to its multidimensional nature. It acknowledges that reality is subjective and relies strongly on individual perceptions and thereby follows the idea of subjectivism. As explained by Saunders et al. (2019, p. 137), subjectivism 'incorporates assumptions of the arts and humanities, asserting that social reality is made from the perceptions consequent actions of social actors (people)'. In other words, 'social

interactions between actors are a continual process, social phenomena are in a constant state of flux and revision'. Hence, there is not 'one reality' determined by certain external factors that can be recognised and measured by all individuals equally. Reality consists partly of facts, but also of many things that lie outside one's subjective perceptions. Reality is not static but a variable and changing dynamic. This way of perceiving reality is particularly appropriate regarding deep-level interviews with key actors on the highly contextual issue of voluntarism and the role of the state in Irish industrial relations.

Generally, an interpretivist approach was taken to the data collected. This applies particularly to the primary data collected via semi-structured interviews but also to some secondary data like parliamentary debates or newspaper articles. Voluntarism is a phenomenon that is perceived subjectively and in very different ways. The interpretivist approach 'emphasises that humans are different from physical phenomena because they create meanings' and its purpose 'is to create new, richer understandings and interpretations of social worlds and contexts' (Saunders et al., 2019, pp. 148–149). Interpretivism sees individuals as perceiving the world subjectively but aims to explain complex social phenomena on a macro-level. Hence, the interpretivist approach to research philosophy suits the topic of this study well.

Besides, a substantial part of the research at hand involved the analysis and interpretation of the law, which is rather fact-based and could therefore be claimed to be 'objectivist by nature'. Objectivism perceives reality as an existing fact independent from the individual perception. The question arises of which philosophical approach is most suitable for the analysis of law. This will be explained in what follows.

2.2 Legal Analysis as a 'Special Case'

The research at hand not only evaluated data from interviews but conducted legal analysis as well. According to Frazer (1999, p. 81), the methodology of industrial relations scholars differs strongly from that of lawyers. As the author states, lawyers focus on what the law does, what its rationale and purpose is and what consequences this has. In contrast to the social sciences, there is no analysis of social processes and dynamics.

At first sight, conducting legal analysis suggests to use objectivism as an approach to rather fact-driven legal determinations. However, in the end, the law only breaks down social phenomena into codified norms to meet the requirements of a large and complex society. When it comes to interpretation of the law, though, taking into account the norm's

purpose and intention, social complexity finds its way back into consideration. Therefore, the researcher, although analysing the law from a fact-driven and objectivist initial point of view, considers subjectivism as being more suitable in the second and most meaningful step of legal analysis, which is the interpretation of law, in particular constitutional law. Only in this way can the law be interpreted in accordance with its original intention, which is to serve society and societal aims and therefore to take into account the complexity of the various realities shaping the matter in dispute. Industrial relations studies generally examine the law in a wider context, namely connected to the other facets of industrial relations, such as social dynamics. In industrial relations, the law does not stand alone but is connected to a bigger picture.

Therefore, the initial philosophical approach the researcher took to analysing the law was critical realism. This approach 'focuses on explaining what we see and experience, in terms of underlying structures of reality that shape the observable events' (Saunders et al., 2019, p. 147). It therefore goes 'behind the facts', while seeing the (legal) facts as an external reality. This approach can generally be considered suitable for the analysis of law. However, when it comes to *interpretation* of the law, in particular high-level law, the approach again becomes more interpretivist. Taking constitutional law as an example, its interpretation is shaped by its legal surroundings at national and international level and the values of the society to which it applies (see Chapter 4 Part 4 on the question of constitutional trade union recognition). Constitutional law is interpreted and hence shaped by court judgments. As stated in Chapter 2 Part 2, even judges and thus court decisions are affected by a certain amount of subjectivity and flexibility in terms of interpretation. When it comes to interpreting the law from various angles, in particular with regard to its purpose and sense, taking an interpretivist approach appears suitable. Hence, when analysing and interpreting the law an interpretivist approach is applied in this thesis, besides critical realism.

2.3 The Joining of Different Philosophical Approaches

Different philosophical approaches are required to do justice to industrial relations when examining the role of voluntarism, the state and the law. The amalgamation of different philosophical approaches to this study is premised on the fact that industrial relations is a particularly multilayered topic at the interface of sociological, economic and legal implications. Hence, it has to be regarded from different perspectives to obtain a realistic

overall picture. Taking such a range of different philosophical approaches and thereby personal attitudes to the research and its different types of data was one major challenge of this study. There had to exist a suitable mix between rationality and empathy, as well as between judging and perceiving.

PART 3: DATA COLLECTION

1. Collection of Primary Data

For the collection of primary data, 17 semi-structured interviews were conducted with key actors in Irish industrial relations from 2023 until 2025. Interviews are considered to be a very effective method for collecting data and gaining access to highly important information, which enables the researcher to understand how phenomena are perceived by interview participants and what meaning they attach to them (Berg and Lune, 2014, p. 115).

1.1. Approach to Conducting Interviews

Semi-structured interviews lasting one to three hours were conducted with key actors in Irish industrial relations, including trade unionists and employer representatives at national and sectoral level, state representatives and academic experts.

The number of key actors in terms of critical stakeholders in Irish industrial relations is limited. A few actors are constantly and intensively involved in questions around the macro-level of collective bargaining in Irish voluntarism. This research aimed to conduct meaningful data from them. The variety of core experts on the matter is well illustrated by the composition of the recent High-Level Group on collective bargaining, which contains 11 key experts on Irish industrial relations tasked with examining the future of the Irish industrial relations landscape (see LEEF Report, p. 3). For this study, interview access to the key actors made it possible to gather important and even unique information on past, recent and future developments, gather (e.g. legal) expert knowledge and at the same time avoid unnecessary and probably incorrect information from actors who are involved only to a limited extent in Irish industrial relations and therefore answer questions rather with suggestions than knowledge and experience. The latter would undermine the validity of the data. This was a good reason for not extending the group of interviewees too widely, but rather for going deeper and taking as much time as possible for each interview. In this way, meaningful and profound data could be gathered.

The table below provides an overview of the anonymised interview participants, including those who are perceived as highest-ranked experts in their particular area in Irish industrial relations:

Table 2: Overview of interview participants

Employee Representatives	Employer Representatives	State Representatives	Academic Experts
Trade Unionist 1	Employer Representative 1	State Representative 1	Academic Expert 1
Trade Unionist 2	Employer Representative 2	State Representative 2	Academic Expert 2
Trade Unionist 3	Employer Representative 3	State Representative 3	Academic Expert 3
Trade Unionist 4	Employer Representative 4		Academic Expert 4
Trade Unionist 5			
Trade Unionist 6			
6	4	3	4
			Total: 17

The researcher conducted 17 semi-structured interviews to keep the process of data collection flexible and adaptive. Semi-structured interviews are aimed at collecting similar information from a certain group of individuals (Lapan et al. 2012, p. 90). According to Saunders et al. (2019, p. 437), they are not standardised and start with a predetermined list of topics. By allowing interaction and letting the course of the interview evolve naturally, meaningful results can be attained. Semi-structured interviews allow for the fact that 'questions, procedures and focus may alter or emerge during a research process that is both naturalistic and interactive' (Saunders et al., 2019, p. 179). Taking an interpretivist approach to research philosophy, the 'list of predetermined themes is likely to be more flexible and contingent on what each participant says' (Saunders et al., 2019, p. 438). Hence the semi-structured interviews were partly exploratory and emergent, which ultimately enriched the data collected. In the case of an interpretivist approach, 'themes will vary, depending on the flow of the conversation' and certain questions might be skipped and modified while new themes emerge during the course of the interviews (Saunders et al., 2019, p. 438). Those new emerging topics also impacted on the knowledge and mindset of the researcher and broadened or further shaped it. The challenge of conducting interviews in this way was to let topics evolve naturally and thereby collect information on the particular expertise of a certain interview participant, while meanwhile coming back to the question set and general topics to be covered in the interview within a certain amount of time. However, it was very important

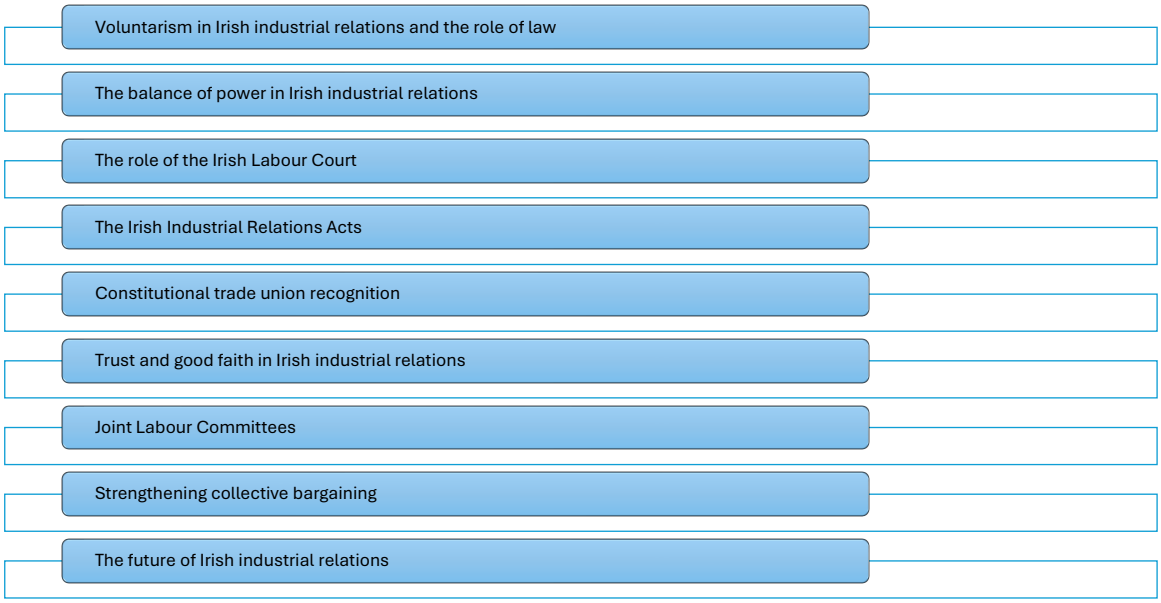
for the researcher to conduct interviews in this way, keeping them flexible but at the same time structured, and thereby achieving both valid and meaningful data collection that takes into account both the general and specific expertise that each key actor involved in this study might have.

1.2 Developing the Interview Question Set

At the beginning of this research project, the researcher critically reviewed the literature on Irish industrial relations and talked informally to people involved in it in an effort to explore issues that might be worth investigating. A variety of questions on voluntarism and the role of the state in Irish industrial relations arose from the initial research and were clustered into nine categories. These categories then constituted the basis for the *Interview Question Set* (Appendix D) used for the semi-structured interviews.

Figure 5 shows the deduced categories for interview questions.

Figure 5: Interview questions categories



Sub questions were developed in each category that provided a framework and orientation for issues to cover during the semi-structured interviews.

1.3 Conducting the Interviews

Interview participants were contacted for the purpose of conducting an individual interview with them and, in case of a positive response, they were invited to an interview.

Interviews took place personally or online, using the video function. Confidentiality and the protection of personal data was granted to interview participants by an *Informed Consent Form* and a *Plain Language Statement* (Appendix E). In case of a personal interview, confidentiality was ensured and interviews were held privately.

As already mentioned, interviews were conducted in a semi-structured format based on the relevant interview question sets. The researcher asked precise questions and listened attentively to the answers to move the interview forward in an enriching way and ultimately to collect meaningful data. While the interview question set provided a guidance for the areas and aspects to cover during interviews, meaningful and important questions also evolved during the talk. Attention was also paid to ask challenging questions to interviewees while at the same time not making them feel uncomfortable. Generally, ethical conduct before, during and after the interviews was important to the researcher, in particular, treating interviewees respectfully and dealing with their statements confidentially to avoid future damage or disadvantages for them.

2. Collection of Secondary Data

It was also important in this study to collect secondary data in form of documents (such as parliamentary debates), newsletter articles, and legal sources, such as legal acts and court judgments for further analysis beyond the data collected in interviews. The aim was to make the results broader based and allow legal matters to be examined, as the latter are not a matter of opinion but of juristic interpretation. Concerning the collection of legal sources, data of national, European and international origin was collected to ensure a multi-angled and thereby accurate interpretation of the law.

PART 4: DATA ANALYSIS

1. Thematic Analysis

Thematic analysis was used to analyse the collected data. According to Braun and Clarke (2006, p. 78), thematic analysis is a 'foundational method for qualitative analysis'. Its purpose is to 'search for themes or patterns, that occur across a data set' by coding the qualitative data collected (Saunders et al., 2019, p. 651). Thematic analysis helps in the analysis of large amounts of multilayered data by clustering it into topics and subtopics. As already explained, an abductive approach was used in this study. This led to evolving themes shaping the clustering of existing themes and the general content of the thesis 'back and forth'.

1.1 Analysing Primary Data

Interviews were transcribed and the researcher first became familiarised with the data. Initial patterns and focus areas were identified in the transcribed text. It soon became evident that the initial questions posed in terms of categories would not be sufficient to analyse the data; certain answers to interview questions often covered various topics and new themes emerged. The researcher thus first identified concise subtopics contained in answers or even single sentences. Those subtopics were again sorted and categorised to identify new major themes and patterns evolving from the data. Furthermore, the researcher used colour-coding for the interviews as it appeared to be the best way to sort the information provided in a flexible and context-related way. It was not a good idea to disrupt the data sets, as even if different categories applied to a certain section a particular citation still had to be seen in context when selecting it as a quotation for the thesis. Therefore, rigorous clustering – for example, by using appropriate software – did appear less suitable. This approach made the analysis of data very complex and tedious but produced meaningful results. Besides sorting and clustering topics chronologically and close to the text of the transcribed data, the researcher also used the method of large 'mind maps' on a flipchart, as it allowed flexibility in terms of collecting an undefined number of topics and subtopics and therefore obtaining a good overview of and structuring the large amount of data. In this way, a clear structure evolved for this study's Data and Evaluation chapter, which also had implications for the literature review using the

abductive ‘back and forth’ approach. This well suited the interactive nature of qualitative research (see Saunders, 2019, p. 640).

1.2 Analysing Secondary Data

The analysis of primary data was accompanied by detailed documentary analysis to support triangulation and verification (see Patton, 1999). Secondary data included newspaper articles, documents (such as parliamentary debates) and legal sources (for example, regulations, court judgments or legal acts and their justification). Secondary data was, in the first step, collected and analysed in advance of the study to obtain a better picture and understanding of the topic. In the second step, secondary data was collected and analysed after the analysis of primary data and to underline and further research the topics that had evolved in the course of the study. It also served to verify statements made in the interviews. Secondary data was also sorted by theme and then assigned to the ‘main cluster’. During the documentary analysis, each document, e.g. a newspaper article, was to be regarded as a social construct that must be seen in the context of its surroundings (Ellem 1999, p. 79).

PART 5: RELIABILITY AND VALIDITY

1. Reliability and Validity

As Saunders et al. (2019, p. 213) put it: 'Reliability and validity are central to judgements about the quality of research'. Reliability 'refers to replication and consistency' (Saunders et al., 2019, p. 213). However, reliability in qualitative studies does not mean that objective observers must come to the same results (Lincoln and Guba, 1985). In qualitative research that is primarily interview-based, reliability can be assured by the choice of interviewees to the extent that that provides a meaningful and neutral basis for the data.

As Lapan et al. (2012, p. 84) put it, in qualitative research data can be deemed valid if it and its interpretation are appropriate to the given situation. Validity 'refers to the appropriateness of the measures used, accuracy of the analysis of the results and generalisability of the findings' (Saunders et al., 2019, pp. 213–214). According to the authors, the researcher therefore must ask whether the measures used are appropriate for the purpose, if there is a legitimate analysis and the findings of the research are meaningful and generalisable. According to Whitfield and Strauss (2008, p. 173) findings have to be questioned critically to find out whether they 'really are what they appear to be'. Errors and biases, in particular those of interview participants and the researcher, also have to be taken into account.

As Roger (cited by Raimond, 1993, p. 55) states, the 'scientific methodology needs to be seen for what it truly is, a way of preventing me from deceiving myself in regard to my creatively formed subjective hunches which have developed out of the relationship between me and my material'. Subjectivity, be it the subjectivity of the researcher or of the qualitative data itself, is one major issue to take into account when conducting research. There should always be an awareness that, as also stressed by subjectivism, there is not 'one reality', but rather reality is perceived subjectively. Also, people who express their perceptions of reality often do not have all the relevant information on a certain topic. This circumstance is both an opportunity and a danger for research.

2. Collecting the Data

Data was collected via interviews and complemented by secondary data, as already mentioned. The researcher sought to collect data that was as meaningful and broad as possible. Industrial relations involve two conflicting parties, employees' and employers' representatives and the state. The researcher therefore used meaningful information from all sides of industrial relations, whether it be interviews, journal articles or parliamentary debates, and approached it through the lens of academic experts' views. Interview participants were chosen carefully and from all sides of industrial relations and allowed to provide a variety of perceptions on the topic. Thus, the reliability of the data was ensured. The collection of secondary data ensures an even more neutral approach to the data evaluated at a later stage.

Collected data can be subjective. Subjectivity can enter into interview participants' answers or documentary and legal data, such as newspaper articles or court judgments (concerning the 'judge's subjectiveness' see Chapter 2 Part 2).

With regard to interviews, used as primary data for this study, interview participants themselves can be subject to human errors and biases when expressing their opinion used as data for this study. Interviews can never be seen as wholly neutral (Cunliffe and Alcadipani, 2016, p. 6). In the present study, the researcher had to bear this in mind, while at the same time allowing the parties to freely express their views and approaches, considering them equally valid. Interviews were conducted personally or via video call, which made it easier for the researcher to understand the meaning or feelings behind a certain statement, as non-verbal language could be observed in that way.

3. Analysing the Data

When analysing the data, the subjectivity of the researcher potentially has an impact on the research conducted. Even if researchers generally try to stay neutral in relation to their task, each person has a particular background, certain knowledge, values and approaches to things. Hence, nobody can claim to be absolutely neutral. It is therefore well recognised that researchers' errors and biases can impose certain restrictions on the reliability and validity of data. It is ethical for researchers to try to minimise their own errors and biases, though realistically total elimination cannot be achieved. Even the choice of the area or specific topic of research is already an expression of the relevant individual and their subjectivity.

The researcher saw it as a personal aim to be as neutral as possible and to reduce errors and biases to the utmost extent possible. The researcher has a legal and human resource management background and has been working within the area of collective labour law and codetermination before writing this dissertation. She has developed a strong interest in the topic at hand. From her own experiences in personal and professional life, the researcher also has developed a certain knowledge and personal perception of the topic. Importantly for this study, the researcher has worked on the employers' as well as on the employees' side and therefore knows the motivations and interests of both parties to labour relations. Personally, she highly appreciates the values of justice, consideration and respect. Though, like everyone else, the researcher perceives reality from her own point of view. This is already displayed in the choice of the title, which concerns the realisation of justice and democratic representation in industrial relations.

Collecting and analysing secondary data besides primary data is one good way of testing validity by examining the convergence of information from different sources (Patton, 1999). The researcher thus took a multi-methods approach. When analysing primary and secondary data, the researcher also aimed to cluster it appropriately and to choose statements and information from all industrial relations actors, as well as academic experts, to show different facets of the topics.

4. Limitations

Further limitations of this study included the limited word count, which was quite restricted for a qualitative study of such complexity.

Furthermore, the researcher is not a native speaker of the Irish language. Therefore, language barriers had to be overcome, for example, when conducting and transcribing interviews or when using specific Irish vocabulary such as *Oireachtas*.

Furthermore, the researcher works in the area of collective labour law and co-determination alongside studying for her PhD and therefore the research was conducted on a part-time basis. This prolonged the research process.

CHAPTER 4:
THE DATA AND ITS EVALUATION

INTRODUCTION

Chapter 4 outlines and evaluates the data collected for this research.

Part 1 outlines current challenges with regard to the balance of power in Irish voluntarism. It describes the challenges concerning both trade unions and employers.

Part 2 describes and evaluates means of rebalancing the power in Irish industrial relations with regard to pure voluntarism.

Part 3 describes and evaluates ways of rebalancing the power in Irish industrial relations in terms of state legal intervention. It examines the significance of individual and collective labour law for rebalancing power in Irish voluntarism. In doing so, it puts particular focus on the Irish Industrial Relations Acts 1946–2015 and the EU Minimum Wage Directive. It also describes and evaluates ways of making employer participation in bargaining processes mandatory at sectoral and company level.

Part 4 examines the issue of constitutional trade union recognition. It evaluates the interpretation of *freedom of association* arising under Article 40.6.1(iii)° of the Irish Constitution. It thereby takes into account the national, European and international implications. Furthermore, it examines the issue of unions' access to the company and protection from union-related discrimination. It also evaluates whether, in case of acceptance of constitutional union recognition for the purpose of collective bargaining, there has to be a constitutional change and evaluates further means mentioned by interview participants as alternatives to union recognition. It also evaluates fears and obstacles in relation to union recognition, in particular the fear of a loss of FDI.

Part 5 examines the role of trust in Irish industrial relations. It thus evaluates the significance of the role of trust between the Irish industrial relations actors. Furthermore, it answers the question of whether the relations between the Irish industrial relations actors are based on trust. Moreover, it outlines how trust can be built between the actors. Finally, it evaluates the role of trust in Irish industrial relations at an abstract level by

examining trust as a reduction of complexity and putting it into a context with the concept of procedural justice.

Part 6 outlines interview participants' views on the future of voluntarism in Ireland and whether it should remain the main principle characterising Irish industrial relations. It also describes the key actors' opinions on the question of whether state legal intervention contradicts the concept of voluntarism.

PART 1: CHALLENGES TO THE BALANCE OF POWER IN IRISH VOLUNTARISM

1. Introduction

In what follows, it will be examined what challenges to the balance of power in Irish voluntarism the interview participants currently perceive. It is important to examine this question further and from the key actors' and experts' point of view when looking for possible solutions to rebalance the power in Irish industrial relations. The challenges will be examined separately with regard to the trade union sphere (2) and the employers' sphere (3).

2. Challenges to the Balance of Power in the Trade Unions' Sphere

Various challenges to the balance of power within the union sphere could be identified during the interviews.

2.1 Decrease in Union Bargaining Power

Interview participants commented on the shift in the balance of power in industrial relations and stated that a decline in union bargaining power can be observed, for a number of reasons.

2.1.1 Shift in the Balance of Power

According to Trade Unionist 4, the balance of power in Irish industrial relations has changed over a long period and in particular since the 1980s, in terms of the decline in union membership. As stated in Chapter 2, Part 3, union density in Ireland has decreased significantly in recent decades and is currently around 22%, while collective bargaining coverage is around 34% (ICTU, 2024).

Indeed, as *Figure 6* shows, union density and collective bargaining coverage decreased significantly in the last decades which does not become obvious when regarding the development of the numbers of *total trade union membership* but when regarding the percentage of *gross* and *net union density*. Moreover, a dramatic decrease in collective bargaining coverage becomes evident (from 63 per cent in 1990 to 34 per cent in 2017).

Figure 6: 'Principal characteristics of unionism in Ireland' by Maccarrone and Erne (2023)

	1990	2000	2019
Total trade union membership	491,000	549,000	552,000
Women as a proportion of total membership	34 %	43 %*	57 %*
Gross union density	57 %	40 %	28 %
Net union density	51 %	36 %	25 %
Number of confederations	1	1	1
Number of affiliated unions (federations)	50	n.a.	29
Number of independent unions	17	n.a.	7***
Collective bargaining coverage	63 %	44 %	34 % [2017]
Principal level of collective bargaining	National intersectoral level	National intersectoral level	Company level in private sector****; national level in public sector
Days not worked due to industrial action per 1,000 workers	264	72	18

Note: *2001; **2016; *** This is an estimate. Whereas Irish law prevents the unions of the Gardaí (police) and Defence Forces from joining ICTU, other representative bodies willingly choose to remain outside ICTU, namely the Psychiatric Nurses Association, the Irish Hospital Consultants Association, and the Irish Dentists Association. There is also the Independent Workers Union, which claims to have about 1,000 members and to uphold the syndicalist ideals of early trade unionists, such as James Connolly and Jim Larkin (Darlington 2008); **** In a few industries, namely in the construction, cleaning, and the security industry, industry-level bargaining persists.

In this context, Trade Unionist 2 sees a dramatic shift in the balance between capital and labour. He/she calls lower density levels '*a real concern'*. Furthermore,

> *We are weaker in the sense of the level of collective bargaining and declining density within the workforce. So, although trade union membership has remained relatively static, the Irish workforce has grown exponentially. So, as a percentage of the entire workforce were declining, that is particularly a big problem in the private sector.*

Academic Expert 4 emphasises that the balance of power in industrial relations is not a fixed and unflexible concept, but changes to it are *'affected by the stage of the business cycle'*:

> *So, if unemployment is low, the economy is booming and growing. This increases the power of unions, visibly employers in general. In some sectors where unions are very well represented, with high density, they are well organised, they have very considerable power against employers, if you look at gig economy companies or low wage employers it is totally different. Their ability is weak. So, all of these variations exist.*

As he/she states, it is thus really difficult to evaluate the macro level of such developments, but for him/her, the overall picture is *'one of variability and complexity'*.

However, there is also the opinion among interview participants that there has been no shift in the balance of power in Irish industrial relations. As Employer Representative 2 states:

> *There is always the argument that you have that balance of power issue. I am not so sure that that still pertains in an economy like Ireland. It may be different in a less developed economy. But in an economy like Ireland, where we have a highly educated and very professional workforce, the people that we would deal with in terms of the employee base are very well educated, are very well protected in terms of that employment rights framework that exists in Ireland, and also are very active in terms of being able to manage their access to their employment rights. So therefore, the balance of power is possibly less of an issue than it might have been in previous generations. Because as I say, we do not find even in direct engagement environments, that people do not have a level of power within their own employment. In fact, we have had full employment for at least the last decade here in Ireland. It is very much an employee's market, and what employers look for, typically, they get. And then when you look at all of the other protections around things like, even our established low pay commission, and so on, there is a level of lifting the boat at all levels of society. So, I think, when we look at that, and we look at the very specific nature of the Irish economy, the balance of power is probably less of an issue, I think, for us.*

2.1.2 Less Unionisation

State Representative 3 also sees a shift in the balance of power because of the weakening of trade unions.

> *There is a greater power imbalance. Unions are much less unionised than they used to be, and some high-profile strikes can cause issues, although trade unions might be of the view that a few hours strike never hurt anyone and shows the power of the trade union movement. (...). So, I do think there is an imbalance, and I think politically, there is still an appetite for engagement with the social partners, but to what degree will they do something to ensure that that remains?*

State Representative 1 emphasises that where unions are weak, it is very difficult for them to obtain decent conditions for their members. He/she states that actually organising

people in the company represents a considerable challenge to the balance of power in Irish industrial relations.

Moreover, he/she states with regard to the decline in union density:

> *It took a long time for it to reach the point that it is at now. That was largely due to the fact that a lot of indigenous companies in Ireland, which historically recognised and dealt with trade unions, closed down and they were replaced by American multinationals who did not recognise trade unions. That resulted in the very significant decline in trade union density and with that a very significant decline in the incidence of collective bargaining.*

2.1.3 Increasing Individualism and Weakening Collectivism in Society

According to interview participants, the rise of neoliberalism and individualism and the weakening of collectivism in society also constitute a challenge to the balance of power between the industrial relation actors, as it eventually weakens trade union bargaining power. As State Representative 2 states:

> *I would say it is a huge challenge for trade unions to promote the value of collectivism, and it is a delicate balance for the state.*

He/she continues:

> *There is an awful lot of selfishness in society these days. It is all about 'me', and 'how can I make myself better off'? Well, if I think that if I do something to one of my colleagues and I am better off, that I should do that then, because I am better off, that is not collectivism. It is the idea of personal sacrifice for the collective good. I am not sure that this is a cultural value that is really adhered to usually by people. In the Irish economy anyway, and I am pretty well sure it is not adhered to in the United States of America. This idea for the collective good, which is the root of trade unionism, the value of collectivism, that we work and stand together and that people are united. So, I think it is a struggle.*

Also, Academic Expert 3 claims that neoliberal economic ideas *'gain ever more foothold'*. This would lead to all the consequences connected to it as the weakening of trade unions or fewer people joining trade unions.

2.2 A Challenge to the Concept of Voluntarism

Trade Unionist 3 says that he/she believes that the reduction in the amount of trade union density in Ireland *'means that some employers have sought to turn their back on voluntarism, and that perhaps government is intervening to try to rebalance that'.*

Academic Expert 4 explains that the shrinkage of collective bargaining as a significant development in Irish industrial relations constitutes a challenge to the traditional concept of voluntarism:

> *The shrinkage of collective bargaining is one major trend. So, from back in the 90s, I remember the coverage of collective bargaining has been over 80% here. Under the national social partnership programmes, the most recent estimated by the OECD, it is about 34%. So, there has been a major shrinkage in the reduction in the coverage of collective bargaining. And behind that, of course, a major reduction in the level of trade union density. (...) These are the big issues that bear upon [things]. If voluntary collective bargaining between unions and employers is the core of voluntarism, in a very simple demographic sense, voluntarism is shrinking, is fading.*

The latter statement is confirmed by current numbers. According to the *FES Gewerkschaftsmonitor* (Doherty, 2023) on Ireland, the most represented group in unions are workers from 55 to 64 years of age (45%). The group of workers from age 45 to 54 is the second strongest (39%), while the proportion of younger employees between 16 and 34 years of age is only 15%. Hence, only a minority of union members are from among the younger generations.

3. Challenges to the Balance of Power in the Employers' Sphere

3.1 Employers' Mindset

3.1.1 General Mindset

State Representative 1 emphasises that historically unions were a fact of life and employers were generally expected to deal with them. This does not apply anymore. Employers have changed their position and mindset towards a more indifferent attitude. As he/she states:

> *Employers, generally, they do not necessarily encourage trade union membership, and do not oppose it either. Because the terms and conditions are being determined on the sectoral basis rather than the basis of individual employments.*

Also, managers are very much focused on maximising efficiency and profitability in their area of responsibility and sometimes see the *'old industrial relations'* as someone else's problem.

Trade Unionist 5 says that there are many companies in Ireland that are non-union and where there is no desire for a union. In light of the concept of voluntarism, he/she states:

> *We are not trying to force people to join a union, but where there are firms where a substantial minority of workers want collective bargaining, they should get it a lot easier than having to go on strike. And the government and the state have the tools at its disposal to support and to help and to facilitate.*

Academic Expert 1 perceives employers' mindset that way that there is a significant number of employers who *'only recognise their commercial responsibilities rather than any social [ones]'.*

Academic Expert 3 stresses that there is a spectrum from being an employer who engages in collective bargaining and in the industrial relations system to an employer who decides not to do so and again to an employer who is actively anti-union and against the system. As he/she states:

> *And that last one to me is problematic because, whether you like it or not, as an employer, you have a choice to opt in or opt out. But what you do not have a choice to do, in my view, morally and legally, is to prevent people from joining trade unions or prevent trade unions from operating.*

As Academic Expert 3 explains:

> *I mean, you have employers who say: 'Well, look, I am not engaging with trade unions, because only 15 per cent of the private sector workers are in a trade union. And, you know, therefore, the unions do not speak for the workers, they only speak for a small section.'*

He/she stresses that a certain anti-union employer mindset also comes from the US.

3.1.2 Multinational Companies

Trade Unionist 3 explains that he/she has some involvement with a few MNCs with union recognition in Ireland and the other countries they operate in. He/she claims that there are some MNCs that do not recognise trade unions in Ireland, but that they do adhere to union recognition in other countries if the local law requires them to. Trade Unionist 3 states:

> *So, there is a variety of ways it is viewed. Some will because they recognise unions in other jurisdictions. Some will not if the law does not require them to.*

Trade Unionist 2 claims that most of the MNCs that he/she has experienced are non-union or anti-union.

3.2 Lack of Employer Engagement in Industrial Relations Processes

Interview participants mentioned the problem of a lack of employer engagement in processes of Irish industrial relations.

3.2.1 General Lack of Engagement – A Problem for Voluntarism

As Trade Unionist 1 states:

> *Voluntarism is great when you have two parties who want to engage, right, but employers become less and less engaged.*

As State Representative 1 states concerning the relationship between the lack of mechanisms for requiring employers to negotiate and the concept of voluntarism:

> *My own view is that voluntarism no longer serves the interests of trade unions or workers, precisely because they do not have the mechanisms to force an employer to negotiate or to force an employer to honour the agreements that they make.*

When unions are weak and not strong, he/she sees an impact on the balance of power in collective bargaining, if there is a lack of employer engagement.

3.2.2 Lack of Engagement in JLCs

As stated in the LEEF Report, collective bargaining at sectoral level is of high importance in current and future industrial relations. Because of the lack of employer engagement, however, the legislative mechanism for sectoral bargaining, the JLCs, often turn out to be ineffective. As stated in the LEEF Report (p. 6):

> However, while a minority of JLCs function well at present, the robustness and effectiveness of this statutory mechanism have been impacted by employer disengagement in relation to the operation of the JLC system in a number of sectors. The nature of the JLC system at present means that the non-participation by either side of industry renders an established JLC inoperable.

The report shows that either employers do not participate in the JLC process at the very beginning, or if they do, the social partners do not reach an agreement at the negotiation stage.

As Trade Unionist 1 states, the JLC system is now in place, but it does not work because of the lack of employer engagement:

> *And part of the problem with the legislation was when they brought the JLCs back into place for various sectors across the economy, the employers refused to participate, and there was nothing in the legislation that would make them participate. So, you are the Hotels Federation, SIPTU, or whatever the reason we might have a JLC, they say, we are not interested. And there is nothing to compel them to do it.*

He/she stresses:

This process cannot work unless both parties come to the table. And if one of the parties does not come to the table, the process cannot proceed. So that is the situation at present.

3.3 Employers' Legal Activism

Interview participants raised the issue that employers in Ireland challenge the status quo of existing law and jurisdiction by resort to legal activism.

3.3.1 Growing Legal Activism

Because of the growing legal activism on the employers' side collective bargaining has been shrinking, as Academic Expert 4 states.

He/she explains:

That is a significant new development where you get continuing legal challenges to the validity of what otherwise are standard long established collective bargaining processes that go back to the foundation of the state or indeed before the foundation of the state.

Academic Expert 1 compares Ireland to other EU countries and states, such as France, Germany, the Netherlands or Belgium, where employers facing the existence of works councils do not claim that the whole system contradicts the Constitution and therefore bring cases to the Supreme Court – unlike in Ireland.

Academic Expert 4 emphasises that employers might generally feel that the law is not congenial to them and so increasingly challenge and use the law, more than they tended to formerly. Case law decisions have been challenged in the courts. For unions the legal climate might be more favourable than in the past. He/she concludes that unions should be given *'encouragement and confidence to take the legal route, if they feel that the issue is sufficiently important for them'.*

As Academic Expert 4 says, legal challenges by employers are often pursued for competitive reasons. After successfully going to court they may also challenge balloting, even if ballots have been conducted properly. They also challenge other aspects of dispute resolution. As he/she states:

I think it reflects remaining or continuing ambiguity in the case of Ryanair about working with trade unions and how to deal with trade unions. From 2017, Ryanair has recognized unions in Ireland, as in some parts of Europe, for pilots and cabin crew. But I think there still is a kind of an overhang of ambiguity about whether

> *this is a good idea. And Ryanair, before recognizing unions was very happy to invoke law to prevent collective bargaining. And there still is, I think, a kind of habit, a 'muscle memory' as it is sometimes called, of using the courts if they feel that that is the best way for them to get their own way.*

Academic Expert 4 explains that most evidently, one could observe an increase in legal activism on the part of employers when looking at the legal challenges to SEOs and REAs.

Legal challenges are often triggered by very small groups of employers. Academic Expert 4 says:

> *I think it has been triggered by relatively small groups of employers, sometimes two to three firms that are small, who are competing or trying to compete on the basis of cost and they view the sectoral arrangements that have been agreed as better suiting large employers, which may indeed be the case. And so, they feel that in order to remain in business and to remain competitive, they have to challenge these arrangements and of course, they are also repeatedly successful, not always, but repeatedly successful in the courts.*

Academic Expert 1 stresses the lack of union involvement:

> *The difficulty with cases like McGowan and NECI is that it was fought between the state and the employer. The unions did not get involved. The union did try to get involved in McGowan. Once McGowan was decided, the union then brought a case to the European Court of Human Rights since Ireland had failed to comply with its obligations under the convention. And the European Court of Human Rights said: 'Sorry, it is inadmissible because the union had the opportunity to make these points to the Supreme Court. And they chose not to'. And the reason it chose not to it was it was not prepared to run the risks and could not get anybody to run it on a pro bono basis. So, there is going to be legal fees involved, quite substantial fees, that are probably not going to be recoverable.*

3.3.2 The Labour Court Respected as the 'Heart of Voluntarism'?

Is the Labour Court still respected as the 'Heart of Voluntarism' in Irish industrial relations, especially by employers?

Academic Expert 2 sees the Labour Court as being very effective and an *'honest broker'*. He/she considers the Labour Court as an important expression of Irish democracy and voluntarism.

Concerning respect for the court's voluntarist role by the relevant actors, a key expert from the Labour Court estimates that more than 90% of Labour Court recommendations are accepted, though the court has no power to enforce them and no means exist to find

out to what degree Labour Court recommendations are accepted by employers or workers and their representatives.

As he/she states with regard to trade disputes taken to the Labour Court by conflicting parties:

> *The employer and the workers have jointly requested the Labour Court to investigate their trade dispute. That is the statutory requirement. So that is a good start, because they have jointly asked us to do it. We have not forced them into the ending (…). And we do think that trade unions generally, and employers generally give a very serious consideration to what we have to say about their labour disputes.*

State Representative 3 emphasises that the role of the Labour Court has changed in the course of time in terms of an increase in individual employment law cases compared with the percentage of industrial relations cases.

Despite the increase in individual employment law cases, which is relatively high compared with industrial relations cases, appeals in the latter increased from 2022 to 2023, while appeals in the area of employment rights decreased. However, referrals were much higher than completed cases, which remained nearly the same between 2022 and 2023 (Labour Court Annual Review, 2023).

This is confirmed by State Representative 1, who stresses that the court was formerly an industrial relations tribunal, while now being confronted with a *'bulk of work'* around individual employment rights.

As State Representative 3 states:

> *So, that is a different balance now, but when it comes to very important disputes, disputes that potentially will have a large economic impact, then you can see (…) the importance of the Labour Court, the importance of the trust people have in the institutions of the state and its effectiveness fundamentally.*

State Representative 1 says that the Labour Court is generally respected, but for a lot of employers it is irrelevant and they do not go there. He/she also warns that non-willing employers may ignore Labour Court recommendations in future. As he/she states:

> *Unions go to the Labour Court all the time under Section 20, subsection one of the 1969 Act, where you agree to be bound in advance to go to the Labour Court. The employer ignores the recommendation. And if they do not have the industrial muscle to take effective industrial action, it is useless. And in many respects, it simply shows up the weaknesses.*

3.3.3 Anonymity at the Court: A 'Double-Edged Sword'

Academic Expert 1 also points to the issue of anonymity at the court. Originally, unions managed to keep their members anonymous with regard to the employer. Workers in the company benefited from the achievements of the trade union and names were not disclosed. However, employers like Ryanair used this to point out that no Ryanair pilot was present in the Labour Court during the proceedings of the *Ryanair case*, though this was because employees were afraid of being identified. Disclosing identities could also bring people into the fatal situation of applying for a new job and being seen as a *'troublemaker'*, as Academic Expert 1 stresses. He/she points out:

> *You are a litigant. You brought a case [to] law. Irrelevant whether you win or lose the case, you are a troublemaker. (...). The unions wanted anonymity at the WRC level, precisely for that reason. And employers are more than happy to preserve their anonymity.*

The issue of anonymity is a big one, as he/she says, even at the EU level. Even lawyers who are involved in such court proceedings, sometimes want to remain anonymous.

4. Conclusion

The challenges to the balance of power in Irish voluntarism occur for a variety of reasons.

In the **trade union** sphere, a shift in the balance of power is perceived in terms of a decrease in trade union bargaining power. Less unionisation, in particular due to a lack of recognition and organisation of members, and a shift of power to the detriment of the unions have been observed for a few decades. The balance of power in the labour market is always changing. A key employer representative stated that he/she considers the balance of power to be a less important issue, but most interview participants do see a change in the balance of power. A general increase in individualism and a decrease in collectivism can also be observed in society and have affected trade union bargaining power.

The decrease in bargaining power has led to a shrinking of collective bargaining, which constitutes a challenge to the traditional concept of voluntarism based on a balance of power.

In the **employers'** sphere, the mindset of employers – in particular MNCs – represents a challenge to the balance of power as it tends to go hand in hand with union avoidance.

US MNCs in particular generally tend to not recognise trade unions. All in all, employer attitudes towards unions vary from being anti-union to engaging in collective bargaining.

The lack of employer engagement in Irish industrial relations processes constitutes another challenge to the balance of power as employers become less and less engaged in voluntarist collective bargaining. In particular, the lack of employer engagement in JLC procedures is perceived as problematic. Growing legal activism from the employers' side and legal challenges to REAs and SEOs have been observed by interview participants, although respect for the Labour Court and its rulings remains high. However, there is a fear that unions do not have the industrial muscle to enforce their interests if employers reject Labour Court recommendations. Finally, anonymity in court and the disclosure of names of employees is perceived as a 'double-edged sword'. Originally, it was intended to protect workers. Now, people sometimes withdraw from legal proceedings or from showing support because they are afraid.

PART 2: REBALANCING POWER IN THE SPHERE OF VOLUNTARISM

1. Introduction

Can the power in industrial relations be rebalanced within the sphere of 'pure' voluntarism? In other words, without state legal intervention?

In this chapter, it will be examined whether the new 'social dialogue' can fulfil this purpose (2). Interview participants further proposed different ways of achieving this goal: persuasion and industrial action; promoting the value of collectivism in society; increasing training, negotiation, communication and the legal capacities and strategies of unions; providing adequate access to information; and building union networks (3.-8.). This will be outlined in what follows.

2. Collapse of Social Partnership – Is the New 'Social Dialogue' Equivalent?

Is the new 'social dialogue' an effective means of rebalancing power between the industrial relations actors in the sphere of voluntarism? And do interview participants perceive it as being equivalent to the former social partnership that existed in Ireland from 1987 to 2010?

Trade Unionist 1 explains how he/she perceived 'social dialogue':

> *So, in the beginning it was just consultation and engagement. So, at the top of a piece of legislation coming in, and stuff like that, but unions really did not have a lot of say. We had our views, same as the employers. But the government made the legislation anyway. But now it is different, the engagement is much stronger. And I think from the employers', and the government side, there is this need now to engage with trade unions to have a solid economy.*

He/she states that social dialogue deals with very specific areas. By contrast, social partnership dealt with a variety of economic and social issues. All the different groups, such as NGOs and smaller employer groups had their say and *'it would set out everything for the country going forward for the next five years'*. However, as he/she claims, this is no longer the case as it became more specific and the range of topics more restricted. Social dialogue deals with economic issues such as the inflation crisis and the cost of living crisis. However, as Trade Unionist 1 says:

It is not as public as social partnership used to be. Not near as public. And less people are involved in it. And it is more specific to economic, industrial relations and social issues.

Trade Unionist 4 evaluates social dialogue as not really being dialogue but more of an information exchange with government ministers and civil servants. Government would rather come to the meeting and say: *'This is what we plan to do.'*

As Trade Unionist 6 states, social dialogue is very controlled. The agenda and the themes are set. The sessions are chaired by the department administrators. As he/she states:

So, I suppose you could argue, is it social dialogue or not? Or is it just the government making sure that they are able to say that they have engaged for one day?

Trade Unionist 6 concludes that social dialogue does not equate to the former social partnership.

And there is this dialogue, and then nothing underneath it. That will lead, we think, to a situation where you might have a very strong national trade union movement, but a weak workplace interface between employers and trade unions.

Trade Unionist 3 states that social dialogue is different from social partnership.

I think there was an awful lot more known about the dialogue and the engagement with social partners previously, and the social partnership system, I think, the unions had more, and the employers perhaps, had more say in it. It might have been more balanced.

Trade Unionist 5 says that currently there exists a *'limited social dialogue'*. However, unions never achieved the right to bargain collectively even in the former social partnership. As he/she states:

We did not achieve our ultimate aim. (…). But if I gave social partnership 10 out of 20, I give the social dialogue regime at the moment four out of 20. They meet three or four times a year. It is an opportunity. When you look at the definition of social dialogue it talks about an exchange of views, sharing information, consultation and negotiation. Our social dialogue in Ireland is exchanging views. There is no consultation, really.

He/she states that the union side has no real influence. Trade Unionist 5 concludes:

So, it is a very, very light form of social dialogue.

However, he/she emphasises that access to social dialogue with no influence is worthless. Trade Unionist 5 states:

You know, if you think you are getting access, but you realise you have no influence, you are just a fool. You know, you need to have some influence.

Trade Unionist 2 also evaluates the role of LEEF, which is '*more a response to the requirements of the EU than anything else'*. LEEF is *'not bad at all'* but not as deep as it would need to be to deal with the variety of issues that workers and citizens face, including social issues such as housing or the cost of living crisis. Trade Unionist 2 states:

> *We feed our views into that, but we are not actually getting to a point where there is some sort of agreed approach to the cost-of-living prices, involving the employers, government and unions. It is an opportunity for us to share our views, which the government may or may not take on board.*

Trade Unionist 2, however, does not think that the industrial relations actors are going back to the former social partnership system:

> *The employers do not want it and I think the unions do not want it.*

Why do the unions not favour a return to social partnership, in his/her view?

> *Because there is no doubt that one of the things that, while there was a lot achieved, led to lower levels of participation within trade unions, where people did not necessarily see the gains as something that was associated with their trade union membership or activity. And that was ultimately quite damaging for the movement over a long period of time.*

Employer Representative 2 explains that after the collapse of social partnership, the Irish government had not been very open to a form of social dialogue. As he/she states, social partnership had become *'somewhat undemocratic'* as it had been very independent from the political system and negotiated agreements that the government would then just ratify. Employer Representative 2 explains:

> *So, I think the thing that we were keen to ensure was that both IBEC and ICTU had an opportunity to have a social dialogue with government to explain, and to be able to clearly input into government policy, what the needs of the business community were and what the needs of the workers were within society, and to be able to give them that operational and policy level view. So that they were making policy decisions, well informed from both sides.*

He/she states that while social dialogue is not partnership, it does have a strong tripartite focus and a very progressive way of engaging. Through social dialogue, the industrial relations actors were able to react to the crisis very quickly. Employer Representative 2 mentions the *Work Safely Protocol* that eventually became the *Return to Work Safely Protocol*, which was an achievement of social dialogue in the context of the COVID-19 crisis. As Employer Representative 2 states:

> *But again, it was the coming together of government under the Health and Safety Authority, and IBEC and ICTU to be able to say: 'Look, this is how people need*

> *to work together'. And it had the support by employers buying in to say 'this is what we need'. (...). I think it was very useful to be able to see how quickly actually a social dialogue mechanism could deliver something ... for employers and the trade unions together.*

State Representative 3 explains that the previous social partnership was dealing with social issues, as well as with pay and conditions. He/she does not think that the current social dialogue equates to it. Social dialogue was introduced to meet the needs at the time.

Concerning the significance of the High Level Group, he/she states:

> *I suppose the focus realistically on this LEEF group should probably be moving toward competitiveness and society. It is a High Level Group anyway, but I think that is where the value would be, and that is where it can properly articulate the usefulness of that kind of joint leadership of whatever it is that we are about to face in terms of business and workers.*

Academic Expert 4 also highlights the importance of the High Level Group and the significance of 'social dialogue'. However, he/she also says that 'social dialogue' is not akin to the former social partnership.

> *So, that was significant in the sense that unions and employers and government through the LEEF High Level Group on collective bargaining were able to come to an agreement on sometimes significant changes (...). So, in that sense, that social dialogue was substantive, and it was meaningful, and it became the channel through which it will be possible to transpose the EU directive into Irish law (...).*

Academic Expert 4 continuous:

> *Social dialogue through the LEEF has also got to grips or is getting to grips with things like the housing crisis. And some other big macroeconomic challenges to the economy. It got to grips very successfully with COVID. In that, you know, a lot of the decisions on employment support under COVID were formulated through social dialogue, truly Work Safely Protocols were formulated through the LEEF on a tripartite social dialogue basis as Return to Work Protocols were discussed through the LEEF. So, all of that, I think, is an indication of the fact that certainly since COVID, and for some years leading into COVID, a particular form of social dialogue that did address important issues was again established in Irish industrial relations.*

The former social partnership '*was viewed as a nasty unusable word in Irish industrial relations, particularly by employers and the government (...). And then with the collapse of the banking system and the economy in 2008, social partnership began to be viewed as a contributor to the collapse.'*

However, as Academic Expert 4 says, the union side would like to see social dialogue strengthened:

Nobody is talking about going back to that trade-off between social policy and public policy measures by the government and moderate paid agreements concluded between employers and unions. (...) I think, within ICTU, they want to see social dialogue strengthened. They want more of it. They wanted to encompass more issues (...).

He/she concludes:

Social dialogue has reemerged for sure. It is significant. Unions and employers want to see more of us. But the parties are quite happy with decentralised, firm level pay bargaining. And so, moving back to social partnership is not on the cards as a model.

Academic Expert 3 says while social dialogue is not comparable to the former social partnership, where everything was decided by the social partners, there is a strengthening of social dialogue, partly as a result of developments at the EU level.

3. The Power of Persuasion and Industrial Action

Trade Unionist 4 says that unions have to persuade employers to engage with them, either by arguments or otherwise by industrial action, in particular by organising a strike to make the employer engage.

As Academic Expert 2 puts it:

Industrial action is the power resource for the unions.

He/she points out that unions in this context might not be aggressive enough anymore. Also, they need the resources for effective strike action.

Trade Unionist 3 explains that people who go on strike get, depending on the union, compensation in terms of strike pay, which is not the full rate of pay.

As Trade Unionist 3 states:

It is most likely not an easy decision for anybody to go on strike. It is not the full rate of pay that is payable when on strike. I can only presume a drop in somebody's income is going to have some kind of influence.

As he/she says, this can also depend on the strategy behind the strike.

Trade Unionist 5 reports his/her own experience regarding strike action and the corresponding interaction with workers when it comes to organising them:

And they would say to me: 'Okay, and if the company will not talk, what do we do?' Then I go: 'Oh, well, then we go to the WRC, or the Labour Court.' And then they say to me: 'Ah, okay, and the Labour Court can make the company talk.' And I go: 'No,

the Labour Court cannot.' And then when I explain to them, all we can do is use what I call the 'power of persuasion'. We can seek to persuade the employer, say, look, try to appeal for their best interest. And when that does not work, we have to use the persuasion of power. We have to have a strike. And I can tell you, I have had many conversations with workers, both workers born in Ireland and migrant workers who have come to Ireland to make Ireland their home, where once I have told them that, they have said to me: 'So we have to strike to get engagement?' I go: 'Yeah.' 'How long would the strike last?' And I would say: 'Well, it might last an hour or might not happen at all. It might last an hour, might last a day, might last a week, might last a month.' You can see the energy draining from their face and you know what they say? They say: 'You are a nice guy. Thank you very much, but we are not doing that.' And they say 'bye, bye', and you never see them again. I am not unique. Loads of my colleagues have the same story. So that is what hinders workers who want to join a union, the employer veto that the employer can go: 'No, not going to talk to your union. Go on strike. Try it. I threaten to close the firm. I will get on to the headquarters in San Diego, and we will say we are moving to Morocco, or whatever, if you do this.' And that is the employer veto.

As claimed by Academic Expert 1, workers should achieve their common goals by the *'exercise of trade union muscle'*. However, a large number of employers are not members of IBEC, as he/she states.

> *It is not like in Austria, as I understand the situation. There, every employer has to join the Employers' Association, or the Chamber of Commerce, they have to join some employer body and that body negotiates with the trade union, so it's irrelevant, what the level of membership is. But that is something which Austrian employers have bought into.*

However, Academic Expert 3 also emphasises the need for a certain and possibly different attitude that unions would have to show, compared with former times, in order to persuade employers to engage with them and prevent employers' resistance:

> *What employers do not want is the shop steward coming in 'ranting and raving' and getting everybody excited, but what they would probably be less resistant to is somebody from the ICTU as a more experienced person who talks a little bit more neutrally, perhaps. They will still resist that but there might be less resistance of employers.*

4. Promoting the Value of Collectivism

4.1 The Need is Out There

The research of Geary and Belizon (2021) shows an appetite among workers to join a union and participate in collective bargaining. According to this UCD study, 44 per cent of workers not in a union want to join one and take part in collective bargaining. This also applies to 67 per cent of young workers between 16 and 24 years of age.

Trade Unionist 5 refers to the study and states:

> *That shows there is a compelling demand and desire post COVID, for some form of collectivisation, some form of collective response, and for collective bargaining. It is very popular, and it is understood within the citizenry and within workers, and there is a demand for it.*

However, as already mentioned, trade union density in Ireland is only around 22 per cent and collective bargaining coverage is around 34 per cent (ICTU, 2024).

As Academic Expert 2 states, attitudes towards trade unions were originally quite positive. However, he/she points out:

> *At the end of the 1970s, after ages, positive attitudes declined, mainly because of the massive attack on trade unions in the press and in the media.*

People might have felt that unions were old-fashioned, and they did not need them anymore. However, Academic Expert 2 says that towards the end of the 1990s there was a rise in people wanting to join unions and there was also approval of unions in general. As he/she states, this was because the state and the laws that were supposed to provide protection were '*dismantled'*. Academic Expert 2 says:

> *The workers then come to realise the full force of the market. They are presented with the full force of the market, and they do not like it.*

4.2 Defining Value and 'Having Something More in Place'

As Employer Representative 1 states, unions have to focus more on the current needs and problems that workers face, as times are changing. As Employer Representative 1 puts it:

> *It is not just about pay and conditions. Maybe there are a lot of other things. If unions were involved in employee well-being and promote some more positive initiatives that might assist in improving density.*

He/she points out that in the construction industry, there has been a pension scheme in place since the late 1960s. Hence, the construction industry had its own sick pay scheme even before corresponding regulations were introduced by the state.

To negotiate and to have something more in place than just pay and conditions would be useful. Employer Representative 1 says:

> *It is a bigger picture. And maybe unions need to look at that kind of thing and what more they can do in terms of providing for workers. And then the world of work is changing. People are working remotely. Maybe there needs to be more of an emphasis on employee well-being and that is massive in itself.*

As he/she stresses, some workers are working at home for a few days a week, totally on their own, which is very different to the former status quo. A lot of other things are changing because of the impact of AI on workplaces. Employer Representative 1 concludes:

> *Everything changes, and maybe the unions are not really changing. And they need to. They need to keep up with all of this.*

Academic Expert 1 suggests that unions should offer additional benefits for their members, such as cheaper insurance, cheaper health insurance or cheap holidays. Furthermore:

> *Initially, in every town, there was a kind of union club where you could get married. There was sort of a social community thing.*

Unfortunately, as he/she goes on, in some unions he/she does not see any *'recruitment drive'*. There are, however, advantages that could be shown to possible future members, such as health care or motor insurance, *'any of these things that cost people money'*, so that people would feel they actually get something from the union. According to Academic Expert 1 small tax credits are another idea. State Representative 3 says that potential benefits could include things like discounts on car or home insurance or other things people would find worth having.

4.3 A 'Delicate Balance for the State'

Promoting the value of collectivism is also a *'delicate balance'* for the state, as State Representative 2 says. He/she answers the question of what the state could do to foster collectivism:

> *You first have to believe that it makes good sense. I mean, if the economists are telling you, it does not make any sense and jobs will be lost and all this kind of other stuff, that goes on very hard for the state to know where it is going to sit on this. The state is conscious of the evolution of the economy to a situation where only around 20% of people at work are really in trade unions. That did not happen by accident, and the state has not done anything to try and do anything about that.*

As State Representative 3 says, it would be important to give unions the opportunity to sell their value proposition and to show people what they offer and thereby increase their membership. As he/she states:

> *And I think once the membership is increased, if it increases, then it is time to look at another step. I know that the unions would much prefer a great swathe of new legislation allowing them to do 'the devil and all', but I do not think that is realistic, and I do not think you can justify that in the first instance.*

According to State Representative 3, there can be a certain level of government support, as opposed to intervention. But unions would have to make their values clear:

> *They need to have a value proposition and they need it for two audiences. They need workers to want to join a trade union, and they need employers to want to work with them. So, they need to develop their value proposition, which I do not think they have done sufficiently. I think that they need to attract customers. How they go about doing that, I do not know, but government could provide training support for a marketing role, a marketing specialist within it, too, to be able to enhance what it is that they are offering and maybe to articulate what they are offering.*

The state could also support an early understanding of industrial relations in society. He/she explains:

> *Maybe where the state could also look is education, whether that is making sure that people in primary and secondary school understand the functioning of the social partners, understand the benefits of being a member of a trade union, and all of that could be intervention without actually intervening in the relationship.*

5. Communication Is Key

5.1 Adapting to New Ways of Communication

State Representative 1 claims that the union approach to communicating with the workers needs to change.

State Representative 2 says, he/she knows that unions work really hard to promote the value of trade unionism and collectivism among workers. However, he/she is unsure of how well this is absorbed. State Representative 2 states:

> *I mean, workers have to want to be in a trade union or be shown that to be in a trade union is actually a very good thing. And historically, it has been a very good thing. And we are in a world now where communicating is changing. You have got about 140 characters in social media to say things. And we have seen general elections take place. We have seen Brexit take place across the social media world. We have seen elections in the United States. More important to be able to just frame a message in about 140 characters than it is to be able to sit in a debate and discuss a matter with somebody and be rational and talk about it. Research is beginning to show that the attention span of young people coming into the labour market now is quite short because they have been so exposed to this whole other way of dealing with things and understanding concepts and engaging in argument and discussion.*

He/she thereby stresses the role of communication and claims that this constitutes a huge challenge for unions promoting collectivism. Not only, as he/she states, because of the new ways and means of communication but also because of language skills, as a certain proportion of the Irish workforce does not even speak English.

5.2 Explaining What a Union Does

Trade Unionist 2 is driving a change programme within the trade union movement. As he/she puts it:

> *We have been trying to bring about change. And part of that is a decision to mount a big public relations campaign, over the coming months, aimed at workers and young people generally across the country to reach out to them to invite them to become members of trade unions to try and explain how it works. And what it involves not in a conflictual way, but in a way where it shows the importance of collectivism and people coming together to actually achieve progress and better things in the workplace. So that is something that we have never done before.*

As he/she says, there has been a decision to invest money in this campaign and therefore a creative agency and public relations firm, as well as market research would now work together to develop a programme. A lot of online platforms are also used for this major public relations offensive.

5.3 The Issue of Access to Communication

However, to communicate and recruit successfully, unions need access to the workers, as Academic Expert 3 says. He/she points out that nearly half of the workers would say that they are not in a trade union because they have never been asked.

According to Academic Expert 3, this is a matter of availability:

> *If there is no union around, as a worker, you are hardly going to seek one out. The unions have to come to you. You are only going to seek a union, if there is a big problem, which is the worst possible point to introduce a union because you are already in an adversarial situation.*

Hence unions should market themselves better in non-adversarial situations.

Academic Expert 3 also suggests providing access to the workers in terms of allowing them to get advice or be officially consulted by an external independent body in the sense of '*workers accessing knowledge'.*

6. Training and Professionalisation

Trade Unionist 4 says with reference to the LEEF Report that training for unions and employers in industrial relations, such as negotiation strategy, would be a good approach to professionalising the relationship between the actors. This could probably be funded by the European Social Fund. Training exercises and programmes and a lot of other things could also be done, as well as training on effective collective bargaining strategies.

Indeed, the LEEF Report (2022, p. 24) mentions in its suggestions that constructive and efficient collective bargaining processes require support for the participating actors. Therefore, the High Level Group suggests an allocation of funding under the National Training Fund Act 2000. According to the Group, training increases efficiency and effectiveness and fosters a bigger take-up of possibilities to bargaining collectively.

With regard to IBEC, Prendergast (IRN 20, 2025) says that in its submission to the recently closed Department of Enterprise, Tourism and Employment (DETE) consultation on collective bargaining, IBEC says that 'action is required to strengthen the capacity of the social partners, and employee and employer representatives, to engage in collective bargaining on wage setting.' Dedicating funding to training in collective bargaining 'will assist Ireland in both promoting collective bargaining and removing barriers to collective bargaining in accordance with Article 4 of the [Adequate Minimum Wages] Directive'.

6.1 Negotiating the 'Bigger Picture'

Trade Unionist 6 claims that the Irish system relies on trade unions and employers more heavily than in other European countries, such as France or Germany, which incorporate works councils and corresponding systems.

As he/she states:

> *So, I think for us, it is a matter of making sure we have sufficiently trained staff, we have strong relationships, that we know how to bargain, and we know how to negotiate and reach agreements as opposed to constantly having disputes. So, it is about making a collective bargain, if you understand what I mean.*

Negotiations are not always perceived as professional, however. Academic Expert 3 points out that one of the objectives of the LEEF Report was to get unions and employers into the room *'but after that, it is up to the trade unions'.* As he/she says:

> *Some employers do not engage with trade unions, purely because they have had really bad experiences in the past, because they have dealt with poorly trained trade union activists who do not think about the bigger picture.*

Employer Representative 1 emphasises the importance of training shop stewards as they come into the union movement. So far, they have had a certain amount of training, but not enough. Also, such training should be in relevant topics, such as employee well-being or fostering negotiations on the '*bigger picture'* instead of just addressing terms and conditions of employment.

State Representative 1 points out that unions also have a responsibility to provide genuine leadership to maximise participation by their members within the unions' own structures.

6.2 Increasing Legal Capacities and Legal Strategy

How could unions strengthen their own legal capacities and strategic approaches?

Academic Expert 1 claims that unions have always had a defensive capacity, which means being responsive to legal issues and legal challenges brought by the employers. He/she stresses that there is also a slight disconnect between ICTU and the individual unions, especially with regard to their approach to legal cases. Furthermore, some unions would support their members in legal issues, and some would not. Unions often lack legal capacities while employer associations are legally well equipped and might even have their own legal department. He/she calls legal costs in Ireland *'absolutely outrageous'*. Academic Expert 1 stresses the importance for unions of taking the initiative rather than merely being reactive.

> *A recent example, for instance, just by way of comparison, in the UK, some regulations were made allowing employers to use agency workers as a substitute for striking workers. Yeah. And a bunch of trade unions went to the English High Court and challenged it successfully. You know, in other words they initiated rather than defending, they took the initiative. (…). You do not see that in Ireland because it involves going to court and it costs a lot of money.*

Academic Expert 1 states that another problem he/she had when representing unions or union members was that unions often see safety and strength in numbers, but the law operates mainly on an individual basis. To provide support for individual members and not only think in terms of collective force, unions need training. Experienced trade union staff could do a better job than a young barrister. However, the underlying legislation is very complex, as Academic Expert 1 stresses. It is also not expressed in an easily understandable language.

Academic Expert 2 says that it is very advantageous for a union to have legal expertise, but it must be connected with a collectivist mindset:

> *You could know the law very, very well. And it would be a great thing to know the law very well. But if you do not have a collectivist ideology, or spirit, then you cannot get a real dynamism to those legal people.*

The legal activities of the union must always be linked to the workers on the ground. The law operates in a context of conflict between capital and labour and therefore cannot be seen in isolation. It law must be a manifestation of what happens in context.

7. Access to Information

As Trade Unionist 4 states, meaningful and informed negotiations between unions and employers on an equal footing should be encouraged. As he/she claims:

> *If you want both sides to negotiate on an equal footing, then it is about both sides having access to appropriate information. Now, if a union is engaged, trying to negotiate with an employer, the employer has information that would be useful to the union. And I think there are ways that could be improved, that there is a better sharing of information. We are not talking about the employer handing over all of its confidential information to the union.*

However, as Trade Unionist 4 explains, there is information that could be handed over, as in other European countries, where annual reports or accounts have to be published or shared. Access to information could be improved in Irish industrial relations. A further basic means for that could be the *EU Pay Transparency Directive* (*Directive (EU) 2023/970)*. As he/she stresses, the employer should make information available on how pay is determined to workers in the company.

8. Building Networks between Unions at the European Level

The importance of EU influence on national industrial relations systems is increasing. Trade Unionist 4 says that knowledge exchange between European unions has improved over recent years. Before the COVID-19 crisis, meetings used to be in person and so attending committees meant travelling to Brussels, spending a day there and then coming back. And meanwhile there was work to be done. From the start of the pandemic, unions immediately moved to online meetings, which immensely facilitated engagement between unions across Europe. As he/she points out:

> *I do not think we would have had the engagement that we had, if we relied exclusively on in-person meetings over the last number of years.*

Trade Unionist 4 says that it is difficult for unions to acquire the capacities they need to deal with the variety of topics at European level. For larger countries such as Germany, Britain or France this is usually easier than for smaller countries. Unions have therefore restricted their focus to particular issues, such as the EU Minimum Wage Directive. In general, at EU level, unions keep informed through good contacts with certain key actors. A European Affairs Officer has been appointed on the union side to coordinate union work across European issues.

According to Trade Unionist 4, however, this new strategy can experience difficulties:

(…) these meetings that used to take place on a Monday morning – unions from all EU member states were asked or invited to attend. But, and unfortunately, it was usually the same people who attended the whole time. And then there were some countries that did not, I never saw them there. (…) And, I mean, I was talking to (…) recently, and he was saying, look, there are some unions in some countries, and the directive is not even on their agenda. And unfortunately, it is a missed opportunity for them.

Trade Unionist 4 explains why he/she thinks that this is the case.

I think, people are busy. People are working on immediate national issues. And what is happening at European level, it is still seen as quite distant. And it is 'over there'. And it is not really relevant. And this is something that will be important in about two years. But I have got more immediate priorities. I think it is just a capacity issue.

He/she points out that online meetings very much facilitated the engagement, but the English language is still a barrier for certain countries.

According to europa.eu (2025), only half of Europeans (47 per cent) can have a conversation in English, of whom 70 per cent are young people between 15 and 24. Older people struggle more often with speaking English. As already mentioned, the percentage of older people in unions is quite high compared with the percentage of younger people.

Furthermore, Trade Unionist 4 says that the European Trade Union Institute plays a very positive role in current developments at European level, especially as they have a high level of knowledge and experience.

Trade Unionist 6 states that cooperation among trade unions is good. For example, the Air Traffic Controllers European Unions Coordination (ATCEUC) and ICTU work really well together. Unions try to influence the EU in the drafting of EU directives and are very content with the current EU Minimum Wage Directive. However, Irish unions are not happy with the reaction of the Irish government to it, as Trade Unionist 6 says. He/she further stresses:

So, it is a domestic issue as well as the European level. I think there is good cooperation, I think it is getting better. I think the employers, farmers, construction groups…there is a lot of groups meeting at European level, lobbying. I think it is largely a lobbying exercise. And the trade unions do not have as many people to do that at European level, from each member state. So, that it is about economies of scale.

Trade Unionist 2 says that one of the things they recognised when working at European level is that the ability of unions to influence European developments with the

Commission or with the Council must be improved. He/she also points out the trade unions' lack of resources at the European level:

> *Generally, our lobbying, we could improve that. So, insofar as we do have resources committed at European level, it tends to be through individual affiliates participating in their Federations. It is not coordinated. So, we have recognised that we need to coordinate that better at the leadership of the Congress.*

He/she adds that at the moment lobbying rather depends on personal contacts and certain individuals. Moreover, people on the union side are sometimes poor at *'linking up'*.

Trade Unionist 2 also confirms that the language barrier remains a problem:

> *And funnily enough, particularly a problem I would say, in Germany, and some countries more than others. A lot of the people who participate at international meetings from their unions are good English speakers, a lot of them. I would not have thought that. So, the Nordics and a lot of the Eastern Europeans (...). I would say Germany and France are more problematic, which is a problem.*

He/she points out that even this morning, he/she had a video conference with a German union in which the union used an interpreter because of their lack of English language skills.

However, Trade Unionist 2 states:

> *But that is maybe not such a problem, as I thought. I think there is a lot of infrastructure around interpretation and translation at the institutions, which probably makes it go, (...) particularly post Brexit, where we were going to be looking or hoping to look differently at our engagement in Europe. It is a problem, and it definitely would limit cooperation. It makes it slower and more dependent on interpretation.*

Academic Expert 3 points out the lack of union coordination at national and European level, as well as within companies themselves. As an interesting case he mentions the missing coordination between unions within Lufthansa:

> *Not only do the unions not coordinate across Europe, say if take the pilots across Europe, it is not only do they not coordinate in Germany, but within Lufthansa. You have unions representing the Lufthansa pilots or representing the Eurowings pilots. And they are trying to coordinate better but up until now, from an employers' point of view, this is perfect because you deal with them and you tell them one thing and then you deal with the others. And if you know that they are not unified and coordinated as an employer, it obviously makes it much easier to play them off against each other.*

9. Evaluation

To summarise, in the view of the industrial relation actors there are insufficient means within the framework of voluntarism to rebalance power in Irish industrial relations.

In particular, the new 'social dialogue' is seen overall as being more about the provision of information than consultation and not akin to the former social partnership. Unions are kept informed but lack influence in this format to realise their aim of protecting and enforcing collective interests. A key expert from the employees' side sees increasing union engagement in tripartite talks. However, interview participants criticise unions' lack of meaningful access to the talks. 'Social dialogue' is, compared to the former social partnership, more controlled and the range of topics is restricted. On the other hand, the former system of social partnership is not perceived purely positively. People have not associated certain instances of success with trade union activity, which lowered their support. Interviewees also criticise that in the former social partnership there was not much interaction with the government and that it was even seen as a contributor to the economic crisis. The industrial relations actors would not want to return to the former social partnership. However, unions would like to see a strengthening of 'social dialogue' in general. It is seen as having a strong tripartite focus and being able to react quickly in crisis situations. Some interview participants see it as having the potential to be strengthened.

As Wall (2016) emphasises that regarding 'social dialogue', it was 'stressed that the move did not represent a return to the former model of social partnership under which employers, unions and other groups enjoyed considerable influence over pay and other areas of public policy'. Social dialogue was only meant to create a common understanding and a fundamental consensus, however, this process is not meant to lead to agreements.

The power of persuasion and industrial action is weak due to decreasing union density and a weakening of collective solidarity. It is stated that industrial action is the main power resource for unions. However, it is perceived as difficult to organise workers for strike action. In particular, workers fear the consequences from the employers' side.

However, the need for solidarity and collectivism is still somewhere 'out there' and could be targeted and fostered using the right means. Interview participants perceive a need for collectivisation in society. Though, unions are increasingly perceived as old-fashioned and potentially unnecessary. Unions should therefore define and communicate their

benefits and values and have ‘something more in place’ that seems attractive to workers nowadays. A majority of young workers would like to be in a union, while only a minority are in fact union members.

As stated above, promoting the value of collectivism represents a ‘delicate balance’ for the state. The state also has to believe in the value and significance of collectivism. It should support unions in selling their value and their ability to increase their membership. Such government support is not necessarily to be seen as intervention. However, unions should clearly define their values. Therefore, the state could support unions in providing qualified personnel, such as marketing experts and in explaining the role of industrial relations in education.

Interview participants state that unions need to change their ways of communicating with workers. They should adapt to new ways and means of communication and overcome language barriers. They also need to outline more clearly what a union actually does for the workers. Therefore, unions also need to be able to access workers. Also, they should not only promote their value in conflictual situations, but primarily in non-adversarial situations.

Training for unions and employers in industrial relations, for example, negotiation strategies, would be a good approach to professionalising relations between the actors and strengthening their capacities. According to the LEEF Report, training increases efficiency and effectiveness and fosters a bigger take-up of possibilities for collective bargaining

Unions and employers and their representatives should negotiate within the framework of the ‘bigger picture’ and not think narrow-mindedly or only address terms and conditions of employment instead of a wider range of topics. Union activists are sometimes poorly trained, as a result of which employers can have bad experiences in dealing with them. Also, leadership skills within unions could be improved.

Interview participants state that unions should strengthen their legal capacities and strategic approaches and be active instead of reactive in the legal sphere. Unions need to provide legal support for individual members and should not concentrate only on collective issues. Therefore, they need legal capacities. However, while having legal experts is very advantageous for a union, legal expertise must be accompanied by a collectivist mindset to make the law work.

Furthermore, unions should build networks at the European Level, as the EU has an increasing influence on national industrial relations. Knowledge exchange between unions at the European Level has increased, in particular since the COVID-19 pandemic and the accompanying digitalisation, which enables better communication across countries. Language can be a barrier, however. Furthermore, it is a challenge for unions to deal with the variety of topics at European level. Especially in smaller countries, unions do not have the necessary capacities to work on anything more than national issues. Concerning cooperation and lobbying there is a lack of coordination among unions and lobbying rather depends on personal contacts with certain individuals.

All in all, it can be concluded that power in industrial relations has not been rebalanced within the sphere of 'pure' voluntarism, thus without state legal intervention. However, interviewees made the following suggestions on how to improve the situation and have a positive impact on the balance of power in the purely voluntarist sphere:

- Unions should increase their openness to change and act correspondingly.
- Unions should adapt to new forms of communication and should communicate the basics, such as 'what does a union do?' Therefore, they need company access and access to information and capacities.
- Unions must offer more than they did traditionally and target such modern issues as AI or work–life balance. They can also offer a sense of identity or a social community.
- Unionists should be trained in negotiation skills and be capable of negotiating within the framework of 'the bigger picture' to be taken seriously, ensuring that employers and their associations have positive and constructive experiences with them.
- Both sides of the industrial relation, also employers, should be provided with sufficient training to professionalise relations.
- Unions should have more access to legal capacities to increase their knowledge and improve their legal strategy, bringing them to an equal footing with employers before and after conflicts escalate.
- Unions should also increasingly build networks and foster knowledge exchange, especially at the European level. Therefore, cultural and language barriers must be overcome. Digital ways of communicating turned out to be beneficial.

By these measures, unions can strengthen their position and power in industrial relations, within the purely voluntarist sphere. Concerning voluntarism and the underlying balance of power, purely voluntarist measures, without state legal intervention, are not sufficient to rebalance the shift in the balance of powers as things stand at the moment.

It will therefore be asked in the next chapter whether solutions within the framework of state legal intervention can compensate for this power shift.

Part 3: Rebalancing Power in the Sphere of State Legal Intervention

1. Introduction

To what extent can the power in industrial relations be rebalanced in the legal sphere? A general increase in regulation can be observed in Irish industrial relations, as stated in Chapter 2, Part 3. We can distinguish between individual (2) and collective (3) labour law. The latter includes the evaluation of the *Irish Industrial Relation Acts* and their impact. The EU Minimum Wage Directive (4) is also considered, as well as proposals for legal measures to foster employer engagement at company and sectoral level (5).

2. Individual Labour Law as a Means of Rebalancing Power

As stated in Chapter 2, Part 3, there has been an increase in individual employment law in Ireland.

The Supreme Court acknowledged the existence of a 'complex legal landscape' in Irish industrial relations in the *Unite* case and concluded: 'It is something of an irony that legislation which appears to be designed to remove industrial disputes so far as possible from courts has resulted in an extraordinarily complex legal landscape, and the necessity to resolve sometimes very difficult issues of fact and law often under considerable pressure of time' (para. 21).

Interviewees commented on the question of whether individual labour law can compensate for the strength and potential impact of collective force and therefore can be seen as an appropriate means of rebalancing power in the labour market.

2.1 Reported Data

According to Trade Unionist 5, individual labour law is important, though not as important as collective strength. He/she says:

> *Of course, we want to see the various pieces of legislation that are on the statute book and that protect individual rights strengthened and improved as time goes on, but they are not anything like the priority of collective interests. I mean, you can have all the individual rights in the world, but if you cannot vindicate them, you know, whereas if you are organised and the firm is unionised and the union is strong and it is active, you have got much greater protection. So, I think it all goes back to collective interest.*

He/she points out that this even goes back to the origin of trade unions, about 150 years ago, which initially were formed to deal with individual cases. Trade Unionist 5 explains:

> *It was to organise large groups of workers to have some power at work and influence in society, to try and change the law for the greater good, for the common good, but to make sure that workers had an opportunity to co-design their future at work, so that they would have a say. So, the collective interest is always, in my personal opinion, much more important than the individual right. Individual rights are important, that has its place, but the collective interest is our raison d'être.*

Academic Expert 4 says that if people feel that their personal rights are affected, they can apply to the WRC and the Labour Court and are not required to involve unions. Some people might go to a solicitor or represent themselves. Some might also be represented by unions and unions have tried to find a new mode of representation by advising their members on employment rights or even representing them at the WRC or the Labour Court. However, in the past, such individual concerns generally would have proceeded through the collective bargaining process. He/she sees a move away from collective bargaining in this context:

> *And now they have been, so to speak, diverted from collective bargaining. And this is one of the consequences of course of trade union success, because unions have been the most ardent campaigners for the expansion of individual employment rights. But I think it is something that has had probably a negative effect on [union] density, because now you have these employment rights. You do not need to be a member of a union to vindicate them. Does the union help you to vindicate them? Possibly. Possibly not.*

Academic Expert 2 emphasises that the individual is generally weak, compared with the collective. He acknowledges that individuals can be protected in terms of unfair dismissal, providing minimum wages, a contract of employment or in terms of sick leave. However, he/she explains:

> *And so, people argue: 'Well, you do not really need unions, because you have individual employment law'. (...). I do not agree (...) for the simple reason that, say I am in a job, and I feel I am being treated badly by the employer, and I discover I have no union. And I suddenly discover: 'There is a piece of legislation that says I should have half an hour break at 11 o'clock. And I should have a document stating my wages and conditions and I do not have either.' I am going to go to the employer and I am going to say: 'Look here, Mr. Employer, you are not acting within the law, you should have given me this and this details, and you should have given me a half hour break.' What is he going to say? He is going to say: 'Oh, dear, I could do that immediately'. He could. But he is more likely to say: 'If you do not like it, skip off, get out'. So, you are weak there.*

He/she further explains:

> *First of all, do the employees know the law? Generally speaking, most people do not know the law. (...). Individuals, they do not know the law. And even if they do know the law, they have to go to the employer and make this individual bargain. Now the employer is not going to entertain that for a simple reason. What happens if it gets about and all the people then find out about it, and they would all be looking for it. So, it is best to deal with this person straight away and get rid of them. That is what I would say.*

Academic Expert 4 also comments on the relation between the rise of individual employment law and voluntarism. He/she says that voluntarism is essentially about voluntary collective agreements between the industrial relation actors and this still remains the '*cornerstone'* of Irish employment relations. In this context, legal developments are highly significant. As he/she states with regard to the increase in individual employment law:

> *These developments are corroding or eroding or contributing to the weakening or the transformation of voluntarism.*

To evaluate the possible weakening of voluntarism, it is very important to understand the whole picture, as Academic Expert 4 states.

As explained in Chapter 2, Part 3, legal regulation from the EU also impacts the regulation of Irish industrial relations.

Academic Expert 4 says that the *'extraordinary explosion of individual employment rights in Ireland'* goes back to the 1990s. Employment rights evolved from the 1970s but there was a dramatic explosion in the 1990s.

Academic Expert 4 emphasises:

> *Much of this legislation originated in directives of the European Union that were transposed into Irish law. This is really one of the most important developments over the course of my career. It affects collective bargaining, in the sense that it now becomes possible to remove from collective bargaining and collective representation. Areas that in the past, if they had been disputed by employees would likely have been disputed through collective bargaining and through their union representatives. This has now changed pretty dramatically in that now employees, they have employment rights.*

Employer Representative 4 also stresses that due to Ireland's EU membership, a lot of employment rights have been introduced to regulate the employment relationship in recent years. As he/she states:

> *So, I suppose increasingly, voluntarism as it was historically known and appreciated had to sit side by side or as part of this kind of wider escalation of*

employment rights. That applies both where there is a collective relationship and where there is not.

2.2 Evaluation of the Role of Individual Labour Law

Generally, interview participants do not perceive individual labour law as being equivalent to collective means, for a number of reasons. Individual employment law is a 'double-edged sword' for unions as they can use it as the basis for negotiations or as a means of putting pressure on employers. However, they can be negatively affected by it, when workers draw back from collectivism, as Wallace et al. (2020, pp. 118–119) state. The authors refer to a study by O'Sullivan et al. (2015) in which nearly 60 per cent of union officials perceived that law would encourage employees to protect their rights using the individual path instead of taking the collective way.

In the end, individuals in the labour market are weak in terms of knowing their rights and enforcing them. Colling and Terry (2010) stress that conflict becomes increasingly individualised, but also that the law is very complex for individual workers to understand and of course difficult to enforce. As Wallace et al. (2020, pp. 53–54) put it, traditionally '(w)orkers believed that they would have more bargaining power to improve their conditions by acting together than by acting individually'. The authors explain that unions – and not the individual approach – were perceived as the most effective means to oppose the employers' side. According to D'Art (2020, p. 84) workers join unions 'to deploy their collective strength' but also to have a level of impact on industrial relations processes and their actual working lives that they would not have as individuals; therefore, collectivism is the source of union power in labour relations and at the same time their legitimation as they express collective interests in the form of collective bargaining.

All in all, collectively expressed industrial action constitutes a powerful means and is an expression of negotiating power that puts pressure on the employers' side (Wallace et al., 2020, p. 54). According to D'Art (2020, p. 96), 'workers associate in unions to exert some check on employer power'. It cannot be compensated by the implementation and use of individual labour law.

3. Collective Labour Law as a Means of Rebalancing Power

As individual labour law cannot sufficiently rebalance power in industrial relations, the question is whether codified collective labour law can achieve this aim. We shall therefore examine the Irish Industrial Relations Acts in what follows.

From the very beginning of the Republic of Ireland, the state set the legal cornerstones for the voluntarist system of Irish industrial relations by enacting Industrial Relations Acts. These should be examined further to illustrate the approach taken by the Irish government to legally regulate collective labour law and to find out the corresponding impact on the balance of power in industrial relations.

3.1 The Industrial Relations Acts 1946 and 1969: Establishment of the Labour Court

3.1.1 Purpose of the Industrial Relations Acts 1946 and 1969

The purpose of the *Industrial Relation Acts 1946 and 1969* (1946 and 1969 Acts) was to set up the basis and fundamental structure of the Irish industrial relations landscape. The 1946 Act established the Labour Court as a core institution of Irish industrial relations. The Labour Court was equipped with further provisions by the 1969 Act.

The 1969 Act declared in section 11:

> **11.** — (1) The Court may, after consultation with organisations which, in the opinion of the Court, are representative of any class, type or group of workers and of their employers —
>
> (a) make rules which apply to, and which, in the opinion of the Court, provide for fair employment conditions for that class, type or group of workers and are approved of by organisations representing a substantial number of the workers of that class, type or group and organisations representing a substantial number of those employers,
>
> (b) make rules which amend any such rules and which apply to and, in the opinion of the Court, provide for fair employment conditions for that class, type or group of workers and are approved by organisations representing a substantial number of the workers of that class, type or group and organisations representing a substantial number of those employers, and
>
> (c) make rules which revoke any such rules.
>
> (2) Rules under subsection (1) of this section are referred to in this Act as fair employment rules. (…)"

The 1969 Act enabled the Labour Court to make rules under certain conditions. Those were called *fair employment rules.* It therefore received significant regulatory power while being the core institution of Irish voluntarism.

3.1.2 Evaluation of Industrial Relations Acts 1946 and 1969

The 1946 Act established the Labour Court as an expression of the voluntarist system. According to Wallace et al. (2020, p. 104), the original objective of the Labour Court was to promote harmonious industrial relations and 'for this purpose to establish machinery… for the prevention of trade disputes' (1946 Act). From the beginning, the Labour Court had certain competences to make rules in the area of industrial relations. By dealing with the consequences of breaches of REAs, the establishment of a rights commissioner and the prohibition on disclosure of information, the 1969 Act established some fundamental principles for the operating mode of Irish industrial relations and the Irish approach to voluntarism.

All in all, the Act set the very basis for Irish voluntarism and its institutional and legal approach. From the outset, the industrial relations landscape was not left purely voluntarist, but a certain legal and institutional framework was established. The state thereby laid the basis for actors to move in this voluntarist system and for power dynamics to evolve.

3.2 The Industrial Relations Act 1990

3.2.1 Purpose of the Industrial Relations Act 1990

The purpose of the *Industrial Relations Act 1990* (1990 Act) was to introduce a better framework for collective bargaining and dispute resolution by making a number of important changes in industrial relations and trade union law. A new Labour Relations Commission was set up to promote good industrial relations. The Act provided for a number of new functions and services, in particular the creation of codes of practice. It changed the structure and operation of JLCs and dealt with REAs. Changes were made in trade union law, such as establishing good practice for pre-strike situations or clarifying the law in relation to picketing and facilitating further rationalisation of the union movement.

In the Parliamentary Debate, former Minister of Labour Mr. B. Ahern stressed:

> The Bill now before the House provides a framework for the improved conduct of industrial relations and for the resolution of trade disputes, with the aim of maintaining a stable and orderly industrial relations climate. The Bill provides for major reform of the law on industrial relations, trade dispute and trade union law and for the establishment of a new Labour Relations Commission.

According to Ahern, the Act contained measures to provide a better framework for collective bargaining and dispute settlement and was supposed to help create conditions for employment-generating investment.

3.2.2 Evaluation of the Industrial Relations Act 1990

The 1990 Act brought about legal changes that provided a better framework for the resolution of conflicts in the area of collective bargaining (Explanatory Memorandum of the 1990 Act). This so-called 'right to bargain' or the 'most significant piece of collective industrial relations legislation in Ireland' (Wallace et al. 2013, p. 33) constitutes an initial tendency to juridify industrial relations. According to Wallace et al. (2013, p. 35) the Act did not restrict voluntarism in the first place, but it brought labour relations conflicts back to the legal sphere.

However, as Rabbitte and Gilmore (1990) state, as court intervention increased, this already constituted a first weakening of voluntarism. Industrial relations actors were involved in various cases, such as *G & T Crampton Ltd v Building & Allied Trades Union [1997] IEHC 174* and *Nolan Transport (Oaklands) Ltd v Halligan | [1998] IESC 5*, which contradicted the original intention of 'legal abstentionism' and the strengthening of voluntarism (Kerr 1991; Wallace et al. 2013; Wallace 1991).

As Wallace et al. (2013, p. 96) claim 'the Industrial Relations Act 1990 marked the most significant change to the collective institutional arrangements in Ireland since the Industrial Relations Act of 1946'. It restored the original purpose and status of the Labour Court investigation and the court's recommendations by establishing a new Labour Relations Commission (1990 Act's Explanatory Memorandum). According to Wallace et al. (2013, p. 96) this meant that the role of the Labour Court became more limited and was restored to a 'court of last resort' in industrial relations matters. The resolution of conflicts was supposed to be brought back into the arena of free negotiations between the industrial relations actors (Kerr, 1991).

3.3 The Industrial Relations Acts 2001–2004

3.3.1 Purpose of the Industrial Relations Acts 2001–2004

Around ten years later, the *Industrial Relations Act 2001* **(**2001 Act) was passed. The purpose of it was to make further and better provisions for promoting harmonious relations between workers and employers, in particular by amending and extending the 1946 to 1990 Acts. The 2001 Act provided for the investigation of disputes by the Labour Court and corresponding recommendations.

It provided for the Labour Court in section 2 that:

> **2.**— (1) Notwithstanding anything contained in the Industrial Relations Acts, 1946 to 1990, at the request of a trade union or excepted body, the Court may investigate a trade dispute where the Court is satisfied that
>
> (a) it is not the practice of the employer to engage in collective bargaining negotiations and the internal dispute resolution procedures (if any) normally used by the parties concerned have failed to resolve the dispute (…).

The Act furthermore provided for the Labour Court in section 6 and 7 that:

> **6.**—(1) Where, in the opinion of the Court, a dispute that is the subject of a recommendation under section 5 has not been resolved, the Court may, at the request of a trade union or excepted body and following a review of all relevant matters, make a determination.
>
> (2) A determination under subsection (1) may have regard to terms and conditions of employment, and to dispute resolution and disciplinary procedures, in the employment concerned but shall not provide for arrangements for collective bargaining
>
> (3) A determination under subsection (1) shall be in the same terms as a recommendation under section 5 except where—
>
> (a) the Court has agreed a variation with the parties, or
>
> (b) the Court has decided that the recommendation concerned or a part of that recommendation was grounded on unsound or incomplete information.
>
> **7.**—(1) Every determination made by the Court under section 6 shall be in writing and shall include a statement of the reasons for the determination. (…).

It thereby provided the Labour Court with a more central role in industrial relations and increased influence. However, according to the Act, a Labour Court recommendation 'shall not provide for arrangements for collective bargaining' (Section 5(2)). Also, Labour Court determinations could be reviewed by the parties under certain conditions.

Furthermore, determinations could also be reviewed and enforced by civil proceedings. Parties could appeal to the High Court on a point of law. The Act increased the role of regulation and the court system in industrial relations. As Gibbons (2015, p. 473) sums up: 'The 2001 Act provided a mechanism whereby the Labour Court could adjudicate on the substantive issues in dispute, provided ... *it is not the practice of the employer to engage in collective bargaining negotiations and the internal dispute resolution procedures (if any) normally used by the parties concerned have failed to resolve the dispute* (Section 2(1)) and that the union had not engaged in industrial action. It also provided unions with an alternative to a strike and the possibility of improving the working conditions of vulnerable workers, even in the absence of recognition. Should a Recommendation not be implemented it was possible to have it enforced by Circuit Court order.'

In the parliamentary debate concerning the 2001 Bill, again, the meaning of voluntarism played an important role. Minister of the State Mr T. Kitt opened the debate on the Bill by pointing out the significance of voluntarism:

> The basic approach to industrial relations in Ireland is one of voluntarism, whereby the law is not used to impose a solution on the parties but will, where appropriate, be used to assist them in arriving at a solution. While labour laws cover such matters as protection from arbitrary dismissal, organisation of working time, employment equality and occupational safety and health, there is agreement on all sides that the voluntary collective bargaining process between the employer and employers' association and one or more trade unions or staff associations shall determine the terms and conditions of employment of workers. The process covers the entire range of issues arising from the employment relationship. Unlike the position in many other countries, collective agreements – consistent with the notion of voluntarism – are not legally binding; they have a moral force only but in practice are no less successful for that.

He stressed the non-binding nature of agreements as well as the distinction between individual employment law and collective matters. Kitt emphasised that, despite the non-binding nature of Labour Court recommendations, there was an acceptance rate of more than 80 per cent by the industrial relations parties. Also, as he stressed, the level of industrial action was historically low. As he pointed out:

> This improvement in our industrial relations culture is due to an approach by Government, employers and unions which is based on voluntarism, on partnership and mutual gains principles rather than adversarialism. By adopting a macroeconomic approach based on social partnership all sides have benefited from the increased competitiveness of our economy.

He stated that the objective of the 2001 Act was to provide a framework for situations in which negotiating arrangements did not exist and collective bargaining failed to take place. With regard to procedures and employer participation, Kitt said:

> I would like to emphasise that an employer must have failed to participate in good faith in the voluntary code of practice for the procedures in this Bill to commence. It is only where an employer has failed to avail of the voluntary approach by use of the Labour Relations Commission and the Labour Court that a trade union can activate referral to the Labour Court for a procedure culminating in a legally binding outcome.

Kitt also stressed:

> Social partnership is rooted in the principle of free collective bargaining. I am pleased that the High Level Group was able to come up with and agree proposals for dealing with this sensitive issue. The proposals demonstrate that free collective bargaining in a spirit of social partnership can achieve real results in progressing complex questions and can also contribute to the development of the prosperity and competitiveness of our economy.

In the parliamentary discussion, the Bill was seen as extending the legislation to give the Labour Court new dispute-settling powers and providing for a two-way dispute settlement structure, firstly a voluntary one and secondly a fall-back option to the Labour Court and its adjudication.

As Mr Coghlan stated in the parliamentary debate:

> I agree with the thrust of voluntarism and our approach in that regard to industrial relations through the years. Nobody agrees with the use of the law to impose solutions. The rebel nature of our character has always struggled against that approach. However, we need to provide a mechanism to assist those who, for whatever reason, have failed to reach a resolution to their disputes. The Bill does this.

Members of the parliament furthermore pointed out the importance of Article 40.6.1(iii)° of the Irish Constitution and union recognition as the starting point of the discussion. Moreover, the aspect of multinational firms and their attitudes towards industrial relations and union recognition was stressed for the first time as a factor in the discussion.

Within the parliamentary debate, Mr Mooney said:

> Senator Costello was right to identify the many multinational companies which have located here in the past decade, especially American companies, which have adopted a non-union policy. That is not to suggest those employers do not discharge their legal and other obligations to their employees. On the contrary, the emphasis in those companies is on agreement, as evidenced by the low level of disputes in many multinational companies involved in inward investment. I do not

> suggest that the absence of unions in the interaction between labour and employers is a bad thing. However, the Bill is concerned with trade union recognition and addressing the issues which arise whenever disputes come to the fore which cannot be solved on a voluntary basis under the code of conduct and must, as a last resort, go to court. It is with that subject that this legislation is concerned. It is a landmark in industrial relations history that we debate this legislation because it has not been an easy road to travel.

It was, however, stressed in the discussion that Ireland would remain with its voluntarist tradition and leave the main industrial relations competence to unions and employers and their associations. The uniqueness of the Irish social partnership system and its positive effects on the Irish economy was stressed.

As Mr Kitt concluded, actors negotiated in the context of the voluntary system and mandatory arrangements for recognition were not a feature. The concluded procedures were only a fall-back mechanism in case voluntary means did not suffice.

The *Industrial Relations Act 2004* (2004 Act) then was designed to make further and better provision for promoting harmonious relations between workers and employers and in particular to amend and extend the 1946 to 2001 Acts.

According to its Explanatory Memorandum, the purpose of the 2004 Bill was to enhance the effectiveness of the procedures put in place by the 2001 Act. The hope was to achieve greater stability in Irish industrial relations.

Trade union recognition was raised once more in parliamentary debate. The Minister of State, Mr Fahey, emphasised concerning this matter:

> On the question of trade union recognition, which Senator O'Toole mentioned, our system is one of voluntarism, which is strongly supported by workers and employers. While the legislation may not be as revolutionary as Senator O'Toole and others would wish, it reflects the consensus between ICTU and IBEC, which I saw as the key in framing this Bill. I have deliberately refrained from bringing forward legislation which would be opposed by the unions or the employers in order to develop the sense of partnership that exists. While differences still exist, the respect that exists between employers and unions is a solid foundation of our industrial relations regime. Long may that continue. We accept there are some difficulties around trade union recognition but while I am in this job, I am open to improving on that situation.

3.3.2 Evaluation of the Industrial Relations Acts 2001–2004

In 1996, the expert group ‘Partnership 2000’ investigated the issue of union recognition (Wallace et al., 2013, p. 40). The topic was of increased relevance as at that time industrial

relations in Ireland faced a number of challenges, including the rise of neoliberalism, increasing union avoidance and decreasing union density (Gibbons, 2015, p. 473). This affected trade union bargaining power.

According to Wallace et al. (2013, p. 40), there was a discrepancy between the unions' participation in social partnership and employers' non-recognition at firm level. The outcomes of 'Partnership 2000' led to the 2001–2004 Acts.

According to the Explanatory Memorandum, the 2001–2004 Acts gave 'new dispute settling powers to the Labour Court in cases where no arrangements for collective bargaining are in place'. The Acts aimed to strengthen trade unions and collective bargaining. The Labour Court was empowered to set legally binding wages and terms and conditions of employment if employers would not engage in collective bargaining and thereby its role was also strengthened. As Cullinane and Dobbins (2014, p. 52) state, the Acts allowed unions to represent employees in non-unionised companies. Unions hoped that the 2001–2004 Acts might be the starting point for the development of full bargaining rights (Doherty 2013, p. 181). According to Wallace et al. (2013, p. 40) the 2001–2004 Acts were very attractive for the unions to begin with, though cases were taken mainly on behalf of small to medium-sized enterprises.

While addressing employers' anti-union behaviour, it was decided to leave union recognition voluntary (Wallace et al., 2013, p. 40). According to Doherty (2013, p. 177-178) the Irish government wanted to protect the voluntarist system. By preserving voluntarism, government and employers also wanted to ensure that Ireland remained attractive to FDI (Teague and Donaghey, 2009, p. 64).

The impact of the 2001–2004 Acts was generally perceived as unsatisfactory. D'Art and Turner (2003) declared the legislation ineffective as no attempt was made to introduce statutory recognition. Gibbons (2015, p. 474) claims that the 2001 Act legitimised employer hostility to union recognition and provoked a tendency towards non-union dispute resolution in collective conflicts.

However, the employers were not the only ones not supporting union recognition and perceiving it as a possible danger to voluntarism. The unions also had some reservations about possible restrictions on voluntarism and therefore refrained from lobbying for recognition rights as the UK unions did in 1999 (Wallace et al., 2013, p. 40). According to the authors, the unions feared that by introducing union recognition, a *right to*

disassociate would also be introduced concomitantly and that this could lead to union derecognition. Though, as things developed in the following, unions were confronted with increasing pressure. As Gibbons (2015, p. 473) stresses, 'the industrial relations landscape had also changed since the 2001 Act's introduction. The financial collapse and ensuing economic recession had taken its toll on union bargaining power and union density.'

3.4 The *Ryanair* Case

3.4.1 The Case

The *Ryanair* case could be seen as the case with the most consequences when it comes to jurisdiction based on the 2001–2004 Acts. Ryanair was in conflict with their pilots' union IMPACT (Irish Municipal, Public and Civil Trade Union). The company claimed to have conducted collective bargaining. Though it had not negotiated with a union, it claimed to have negotiated with an 'excepted body' within the company. However, the latter consisted of representatives from the employers' side only.

The Labour Court was investigating the issue according to the provisions of the 2001–2004 Acts and determined that collective bargaining had not been engaged in. It was therefore accused of having acted *ultra vires* (D' Art, 2020, pp. 90–91). The Labour Court rejected this allegation.

While the Labour Court, as well as the High Court ruled in favour of IMPACT and denied that collective bargaining had taken place, the Supreme Court finally decided the matter in favour of Ryanair. It found that the company had effectively bargained with its in-house 'excepted body'.

When ICTU complained about this to the International Labour Organization (ILO), it was accused by the Irish state of having asked for 'mandatory collective bargaining', which would contradict voluntarism (ILO 2012, p. 230). The ILO reacted by demanding that the Irish state should 'ensure respect for the freedom of association and collective bargaining principles' by reviewing the Irish legal framework (ILO 2012, p. 231).

In its judgment of 2007, the *Ryanair* case, the Supreme Court held that the Labour Court had failed to comply with the requirement of fair procedure in determining that it had jurisdiction to decide on a range of aspects raised by the union. Besides procedural issues, the Labour Court had ruled that Ryanair did not engage in collective bargaining and had

no effective internal dispute resolution procedure. The Supreme Court held that the Labour Court was mistaken in concluding that Ryanair's employee representation committee was not an 'excepted body' and that the Labour Court had not presented sufficient evidence. It ruled in favour of the company. The Supreme Court further rejected establishing a definition of 'collective bargaining'. As already mentioned, a definition of 'collective bargaining' is now included in the 2015 Act.

3.4.2 Significance of the Case

The intention of the 2001–2004 Acts had been to provide a foundation for collective bargaining in non-union environments. The Supreme Court judgment in the *Ryanair* case demonstrated that the legislation due to its judicial use had not been effective enough to realise this intention. It 'exposed significant loopholes in the existing legislation which employers have exploited to their advantage' (Cullinane and Dobbins, 2014, p. 53). Some authors even claimed that the judgment 'means that companies can now use non-union representative committees to avoid the new Industrial Relations Acts' (O'Sullivan and Gunnigle, 2009, p. 261). It is indeed questionable, if a body that is under the control of the employer can be representative for the workers' will. Regarding this, D'Art (2020, pp. 91–92) emphasises that '(w)hatever negotiations might have gone on with the excepted body or the employee representative council in Ryanair, they could never, under ILO Convention 98, be considered as collective bargaining'. As he states, an 'excepted body' does not require the consent of both parties but is introduced by the employers' side only. It is therefore 'established, controlled and dominated by the employer' (D'Art, 2020, p. 91). A balance of power between the industrial relations parties, which is the foundation of effective voluntary collective bargaining, can hence not be guaranteed; also, ILO Convention No. 98 prohibits employer-dominated bodies (D'Art and Turner 2007).

The ILO reacted to the outcomes of the *Ryanair* case by demanding the Irish state to "ensure respect for the freedom of association and collective bargaining principles" and to review the current legal framework (ILO 2012, p. 231).

However, the *Ryanair* judgment has been considered a 'step back' for the Irish unions (Doherty, 2007, p. 8). Claims made under the 2001–2004 Acts thus diminished (D'Art, 2020, p. 92).

The 2001–2004 Acts aimed to strengthen the role of the Labour Court as they allowed for it making recommendations and in certain cases binding determinations (Doherty, 2007, pp. 2–3). The Labour Court was put into a strong position as it was given the power to set legally binding wages and conditions of employment (Wallace et al., 2013, p. 40). The Acts clarified that court intervention was desired where collective bargaining would not take place and the Labour Court was given the power to investigate and evaluate this circumstance. Its original voluntary position as a 'fallback' option was hence strengthened (Cullinane and Dobbins, 2014, p. 56). The Acts combined the establishment of a powerful position for the Labour Court with strong voluntarism.

However, this powerful position was challenged in the Ryanair dispute. The employer did not accept and respect the Labour Court's recommendation and even when it was again confirmed by the High Court, the employer did not hesitate to take the case up to the Supreme Court.

By this process, the Labour Court as the 'fallback' option for voluntary procedures and its role as the industrial relations expert body were questioned. While Irish industrial relations are based on voluntarism and collectivism, and the state should not intervene excessively by legislature or judiciary (see also Teague, 2009), in the *Ryanair* case the Labour Court as '*the heart of voluntarism'* had been accused acting *ultra vires* by the state's highest court.

As D'Art (2020, p. 96) puts it, '(i)t has been suggested above that the deficiencies in the Supreme Court judgment in Ryanair can largely be ascribed to the ideological dominance of common law individualism in judicial thinking'. As described in Chapter 2 Part 2 and 3, common law has traditionally been hostile to unions and judges' subjectiveness can be regarded as being inherent to court rulings, especially when there is room for legal interpretation. The Supreme Court interpreted the law in a way that weakened the employees' side. Indeed, after the Supreme Court judgment in the *Ryanair* case, only six cases went to the Labour Court from 2008 to 2014 (Dobbins et al., 2020, pp. 79-80).

In the *Ryanair* case, the Labour Court was also accused of being over-reliant on the views of the union and was criticised for its 'mindset' and unfairness (Doherty, 2007, 2013). It was asked to recommend on a stronger evidential basis with regard to the comparability of employers (Dobbins et al., 2020, p. 79). As stated by Doherty (2007, p. 4) the Supreme Court's judgment was surprising – until this point, recommendations of the Labour Court

and its role as a labour relations expert had been highly respected; however, this judicial development jeopardised the Labour Court's objective of providing fast, informal and inexpensive support in industrial relations conflicts (Labour Court Mission Statement). According to Wallace et al. (2013, p. 40), the 2001–2004 Acts had even addressed this issue by introducing time limits for the Labour Court. Long drawn-out processes were already perceived as a problem, as this aspect is relevant when it comes to the acceptance of the Court by the conflict parties and hence its legitimation.

It was furthermore claimed that the Labour Court did not correctly evaluate the existence of collective bargaining, deciding that collective bargaining had not been taken place (Dobbins et al., 2020, p. 79). This was also due to a lack of a consensus concerning a concrete definition of 'collective bargaining' and whether it could be conducted only by unions or also by in-company bodies. According to Dobbins et al. (2020, p. 79), '(t)he Labour Court also had not followed fair procedures in allowing membership non-disclosure'.

The Supreme Court also held in the *Ryanair* case that 'Ryanair is perfectly entitled not to deal with trade unions nor can a law be passed compelling it to do so'. The judge thereby took the view that not only neglected the existence of union recognition but declared it a future legal impossibility. However, as D'Art and Turner (2007) state, by considering statutory recognition to be a legal impossibility 'Ireland would occupy a relatively unique position among the western democracies'.

All in all, the 2001-2004 Acts were perceived as unsatisfactory in terms of providing for a balance of power in industrial relations and jurisdiction basing on them even weakened the trade union movement. Also, employer rejection of real mutual engagement with the employee's side was justified by the existence of the voluntarist system by the Supreme Court, ruling that 'Ryanair is perfectly entitled not to deal with trade unions nor can a law be passed compelling it to do so'.

3.5 The Industrial Relations (Amendment) Act 2015

3.5.1 Purpose of the Industrial Relations (Amendment) Act 2015

As the ILO had requested Ireland to review its legal framework regarding the weakening impact of the *Ryanair* judgment on collective bargaining in non-union environments (ILO

2012, p. 231), the Irish state passed the Industrial Relations (Amendment) Act 2015 (2015 Act).

According to its Explanatory Memorandum, it was intended to give effect to the legal regulations contained in the 2001–2004 Acts and 'to ensure compliance by the State with recent judgments of the European Court of Human Rights (ECHR)'. The 2015 Act should legally support the government's approach to reforming the former Industrial Relations Acts and make them effective again in dealing with collective bargaining. Therefore, as stated by Duffy (2019), the Act has been framed quite precisely to protect it from legal challenges by the courts, as in the case of *Ryanair.*

The 2015 Act has three main parts: Collective bargaining and related definitions, REAs, and SEOs. It re-introduces REAs (see Chapter 2, Part 3) as the previous system of legally binding agreements had been struck down by the Supreme Court in 2013. Thereby, certainty around pay and conditions should be provided, a 'race to the bottom' avoided and skill standards maintained. Legally binding SEOs (see Chapter 2, Part 3) were introduced that could be applied to all workers and employers in a certain economic sector. The 2015 Act outlines the whole SEO process precisely.

The Minister of State at the Department of Jobs, Enterprise and Innovation, Deputy Gerald Nash, opened the parliamentary debate, emphasising the need to improve the existing legislation:

> For several years there have been gaps in the statutory framework as regards workers who seek to better their terms and conditions either through collective bargaining or by means of registered employment agreements, REAs. These gaps arose after the Supreme Court struck down the old REA framework on constitutional grounds, having at an earlier stage found serious fault with the collective bargaining legislation. The Bill is a direct response to these rulings. It represents delivery on two key commitments and it is a Bill I am very proud to have progressed. I entered public life 16 years ago to improve people's living and working conditions. I believe this new legislation can help to do exactly that.

Gerald Nash, however, stressed the voluntarist nature of Irish industrial relations and the subordinate role of the state:

> In all these cases, I stress, however, that while Government policy is to support enterprise level agreements and to provide the framework for them, believing they are mutually beneficial and that they safeguard the interests of employer and workers, they are in essence voluntary agreements negotiated between a business and its workforce through their unions. The content has to be settled between the parties themselves and is not imposed by Government.

The aim was to make sure that Irish law would be compliant with the ECHR. Hence, the Act should provide mechanisms to deal with situations in which there was no collective bargaining. The Labour Court was given a more important role in collective bargaining processes. The Act should also protect workers when claiming their rights.

Gerald Nash characterised the 2015 Act as the most significant shift in Irish industrial relations of recent times:

> Taken together with the national minimum wage (low pay commission) Bill that is at present before the Seanad, I believe that the next few weeks represent a unique opportunity for the Oireachtas to bring about the most significant shift in the industrial relations landscape seen in many years.

The 2015 Act legally defined 'collective bargaining' and 'excepted bodies' for the first time in the history of Irish industrial relations:

> **Collective bargaining**
>
> **1A.** For the purposes of this Act, '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.
>
> **Excepted body to which this Act applies**
>
> **1B.** For the purposes of this Act, 'excepted body to which this Act applies' means a body that is independent and not under the domination and control of an employer or trade union of employers, all the members of which body are employed by the same employer and which carries on engagements or negotiations with the object of reaching agreement regarding the wages or other conditions of employment of its own members (but of no other employees). (Part 3, 27. of the 2015 Act)

Gerald Nash stressed in the debate that *genuine* collective bargaining must take place where the employer claims to negotiate with an 'excepted body'.

He concluded in the opening of the parliamentary debate:

> I am confident that this framework will fit Ireland's constitutional, social and economic traditions and its international obligations and, very importantly, will ensure continued success in creating jobs and attracting investment into the economy.

However, the Act was disputed among parliamentarians.

Deputies stressed the importance of maintaining the voluntarist approach. Also, FDI and MNCs and their role in the Irish economy were made an issue, as MNCs employ nearly 300,000 people in Ireland.

As Deputy Dara Calleary stated with regard to the Labour Court's role in terms of sectoral bargaining processes:

> The issues in regard to the resourcing of this legislation are hugely important. The Minister of State must ensure that when we are giving all this new responsibility and new flexibility to the Labour Court, it is properly resourced.

Deputy Peadar Tóibín raised the following criticism regarding the continuing existence of voluntarism during the debate:

> The Labour Party in government has not set out a clear strategy on how it intends to address the challenges that arise from the voluntary nature of Ireland's industrial relations system. (…) With specific reference to the collective bargaining provisions, we remain concerned that the mechanism will not adequately meet the goal and that the voluntary system underpinning this approach is fundamentally flawed.

Deputy Joan Collins concluded:

> The real weakness of this legislation is that it will not fundamentally provide the legal right for collective bargaining compelling employers to recognise trade unions where a majority of employees wish their union to negotiate on their behalf.

Deputy Thomas Pringle stressed, that in his view, the Bill showed deficiencies, particularly regarding trade union recognition:

> While it is a positive attempt to foster better relations between employers, employees and their representatives, this Bill contains a number of shortcomings. Fundamentally, it does not increase the obligation on the employer to recognise the role of trade unions in dispute settlements. While we are told this is due to a Supreme Court ruling in the *Ryanair v. IALPA* decision (…), which deemed it was unconstitutional to force an employer to recognise a trade union, I wonder is that really what this case turned on. (…). Is the Government really willing to engage with this issue?

He pointed out that in other countries different measures for fostering recognition would be taken, like the duty to bargain in good faith and the disclosure of certain information to trade unions or worker representatives.

As Pringle stated:

> Even without forcing the employer to deal directly with trade unions, it is very possible to foster a more co-operative environment, which would, in turn, lead to more resolutions.

He emphasised that enforcement would have to be part of the solution.

In conclusion, at the Committee Stage of the Bill, Deputy Gerald Nash stated that the Act

> provides a strengthened opportunity for trade unions to bring cases on behalf of their members to the Labour Court in a robust fashion and have the terms and conditions of a particular group of workers compared against an analogous group of workers in similar employment, whether they are represented by trade unions, and, crucially, where collective agreements are commonplace. I believe this provides a host of opportunities in constitutionally robust law that will allow for people's pay and terms and conditions to be improved if a trade union brings a case through the Labour Court and secures a recommendation, ultimately imposed through the Circuit Court, if it is the case that there is no engagement or if an employer refuses to engage. All of the provisions are, by and large, welcomed by trade unions. We can see how effective they can be in advancing the rights of working people to improve pay and terms and conditions.

3.5.2 Use of the Industrial Relations (Amendment) Act 2015

As stated by the LEEF Report, the process of referring disputes to the Labour Court under the 2015 Act has rarely been used due to difficulties finding comparators, as required by Part 3 of the Act (SEOs). Unions instead tended to refer to the 1969 Act. However, in contrast to the 2015 Act where a process can result in a binding determination of the Labour Court, the 1969 Act only provides for recommendations, which are completely unenforceable and can be disregarded by employers. Limited usability of the 2015 Act therefore constitutes a challenge for unions as their ability to impose their will diminishes and it renders the Act an 'empty shell' in this regard.

Trade Unionist 6 states that if an employer does not recognise a union and the members want to enter into a dispute, unions have to demonstrate that they have the majority of workers on their side.

He/she stresses:

> *And then you have a very laborious process under the 2015 Act, which unfortunately has not been used that often. And even where it has, it has not secured trade union recognition. (...). The bar is very high. People are intimidated by employers, they would have to go in and they would have to give evidence to say: 'Yes, I am a trade union activist, I am a trade union member.'*

Academic Expert 4 asserts that unions attempted to use the 2015 Act for their purposes in terms of the right to bargaining, as they saw themselves increasingly confronted by employers with substantial legal resources and strategies. Different legal capacities on the employer and union sides also constitute an obstacle for unions wishing to make use of the 2015 Act. As Academic Expert 4 stated:

> *One of the problems unions have had in trying to win improvements for members who are working in firms that refuse to recognise trade unions or engage in collective bargaining is that when they have gone through the procedure to the Labour Court, they have found themselves faced by employers, as the Americans say 'very heavily lawyered up', supported by knowledgeable senior barristers, well paid, well resourced, challenging, procedurally, a whole variety of dimensions of the claims made by unions. And that is another facet of this growing legal activism that I mentioned.*

3.5.3 Evaluation of the Industrial Relations (Amendment) Act 2015

With regard to the 2015 Act, Wallace et al. (2020, p.45) state: 'It provides for a hybrid, two-stage process where the Labour Court can first issue a non-binding industrial relations recommendation on terms and conditions and, only if that is disregarded by the employer, can it then issue a legally binding determination.' This development can be seen as a further move away from the voluntarist system that is characterised by the non-binding nature of Labour Court determinations – though, to the unions advantage. The union can seek enforcement of the determination by the Circuit Court in the case of disregard by the employer and no revision will take place (Kerr, 2015, p. 286). Legal competencies of the Labour Court where thereby increase and its role strengthened. However, under the 2015 Act, the court can interfere only if the employer did not engage in collective bargaining with a union or 'excepted body' previously and if the number of workers represented by a union is not insignificant.

With regard to obscurities in the *Ryanair* case concerning the definition of 'collective bargaining', the 2015 Act defines the latter for the first time in Irish industrial relations, which is a remarkable development. 'Collective bargaining' is now legally defined in s.1A and s.1B of the Act. Also, the 'excepted body' has been defined in s.1B as being independent from the employer and hence not under its control, and acting with the objective of reaching an agreement. It thereby followed the ILO's conception of *freedom of association* (D'Art, 2020, p. 92). The Act also reintroduced Registered Employment

Agreements (REAs) and Sectoral Employment Orders (SEOs), which the Supreme Court had formerly declared unconstitutional.

The first 'test case' with significant outcomes taken up under the 2015 Act was the case *Services Industrial Professional Technical Union (SIPTU) v Freshways Food Company [2016] LRC 21242* (*Freshways* case). It set various precedents for use of the 2015 Act. The court ruled on whether it had been the 'practice' of the employer to engage in collective bargaining, and whether Freshway's 'Staff Representative Group' was an 'excepted body'. The Labour Court rejected both. It also decided that to satisfy the condition of not being 'unsubstantially represented' it would suffice that 30 per cent of the workers would be represented by a trade union and the case was therefore admissible. The Labour Court set an employee-friendly low bar in this regard. It was not legally challenged in the aftermath but led to pay increases and the introduction of a sick pay scheme.

However, subsequently the unions made little usage of the 2015 Act, although the Act was meant to rebalance the deficiencies brought to light in the *Ryanair* case in their favour, as unions wanted to protect the Act from further legal challenges (Duffy, 2019). They also wanted to avoid setting the wrong precedents at the court. As stated by Wallace et al. (2020, p.46) in early 2020, only five cases were brought to the Labour Court and only two recommendations were made. Long drawn-out procedures remain a problem. Particularly when unions are facing anti-union behaviour and employer pressure while struggling with a situation in which 'the natural momentum of organizing declines' (Holgate et al. 2018) they need swift processes and decisions.

Concerning the Labour Court, the 2015 Act aimed to reinstate a strong role for the Labour Court as the 'heart of voluntarism' in Irish industrial relations. It was given an incontestable power of deciding on the existence of collective bargaining in non-unionised companies and also the means required for that purpose by the Act. In this way, it was strengthened in its role as the expert organ of industrial relations in the sense of a 'last resort' for industrial relations actors. It was also protected against excessive challenge by other (civil) courts. Its decision-making in the *Freshways* case was highly respected by both parties and led to significant outcomes and precedents without being challenged in the aftermath. However, in 2021 the High Court in *Náisiunta Leictreacht v Labour Court [2021] IESC 36 (NECI* case*)* challenged the role of the Labour Court and

it was again claimed that it had acted *ultra vires* and therefore beyond its competencies, as will be explained in what follows. However, the low usage of the Labour Court by industrial relations actors regarding the 2015 Act can undermine the court's role and influence on industrial relations conflicts.

The 2015 Act was meant to serve the tradition of voluntarism in Irish industrial relations (Ged Nash, Secondary Parliamentary Debate to the 2015 Act). It introduced remarkable changes and clarifications in terms of collective bargaining and provided for ILO compliance. However, in practice, it did not have the desired impact and did therefore not suffice to rebalance the power between unions and employers and their associations in industrial relations. Employers even legally challenged its constitutionality, as explained in what follows.

3.5.4 The *NECI* Case

3.5.4.1 The Case

In the *NECI* case, the court dealt with the constitutionality of SEOs, the role of the Labour Court and the concomitant challenges by the employers' side to Chapter 3 of the 2015 Act. Chapter 3 of the Act empowers the Labour Court to make legally binding SEOs and thereby determine terms and conditions relating to the remuneration, sick pay or pension schemes of a particular class, type or group of workers in a specific economic sector.

National Electrical Contractors Ireland (NECI) represents a number of employers in the electrical contracting services sector and challenged the validity of the Electrical Contracting Sector SEO and Chapter 3 of the 2015 Act by claiming latter to be unconstitutional and contradicting Article 15.2.1° of the Constitution (Arthur Cox, 2020). As Arthur Cox states, the Labour Court was also accused of having breached its duties to 'act with constitutional propriety and natural justice and the duty to provide clear reasons for its decisions'.

In 2013, the Supreme Court had already dealt with the question of constitutionality with regard to REAs in the case *Benedict McGowan and Others v Labour Court and Others [2013] 2 ILRM 276; [2013] IESC 21; [2013] 3 IR 718 (McGowan* case*)*. The court held that the competencies given to the Labour Court to make an REA contradicted Constitutional Article 15.2.1°, which states:

> The sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State.

In the *McGowan* judgment, judge O'Donnell J decided that Section 27 (3) of the 1946 Act was not compatible with Article 15.2.1° of the Irish Constitution, as the law was made by another body than the parliament. The court criticised the fact that an REA could have been made without 'any possibility of intermediate review'.

Chapter 3 of the 2015 Act was an elementary response to the *McGowan* case, as stated by the Supreme Court in the *NECI* case. The Supreme Court outlined:

> What was imparted to the Labour Court by the 2015 Act was not something entirely new, rather, it was the legislative endeavour to create a constitutionally compliant structure for a decision-making process in this area, which had been ongoing for decades prior to *McGowan* in 2013. (para. 94)

By its *NECI* case judgment, the Supreme Court overruled the previous High Court decision and concluded that Chapter 3 of the 2015 Act was constitutional and that there was no unconstitutional delegation of legislative power to the Labour Court. As stated by the court, the Oireachtas can delegate power by law, unless this is unlawful itself. The state remains democratic and sovereign in its nature and the separation of powers must be protected (Art. 5 of the Irish Constitution; *Laurentiu v Minister for Justice [1999] 4 I.R.26.*). However, the Supreme Court stated that Article 15.2.1° must be seen within its constitutional framework and one had to 'acknowledge the reality of the Constitution as a living document' (para. 69) Concerning whether a union is 'substantially representative' for workers, the court held that while this term was not defined, it did not raise a constitutional issue in terms of fair procedures, as the facts and circumstances of applications made to the Labour Court would vary considerably (para. 51). In this context it is also important to consider that by enacting the 2015 Act, the Oireachtas also wanted to address the issue of union recognition and the lack of collective bargaining procedures.

In the *NECI* case, the judge pointed out:

> However, I leave this consideration with some reflections. The first is that the statutory process involved is a highly unusual one, perhaps *sui generis*. It seeks to establish a statutory procedure which creates entitlements for applicants, but also for objecting parties. At the same time, however, the process has a clear policy dimension, in the sense that, subject to compliance, the result is intended to be that sector-wide agreements can be made. There will, therefore, necessarily be a tension between this policy-objective, on the one hand, and ensuring that the rights of objectors are vindicated in an area of law in which, whilst not directly invoked,

> the constitutional right of freedom of association may well arise for consideration. (para. 138)

The Supreme Court stressed that the Labour Court was urged to act within constitutional and statutory constraints and often under high pressure within the interface between the constitution, statute law and industrial relations. It claimed:

> The discussion must have regard to the consequences of a misstep, including the possibility of industrial action in a vital sector of the economy. To ignore these facts would be naive and unreal. But this does not mean that constitutional or statutory duties can be short-circuited or set to one side. The ultimate question under this heading is whether, in performing this statutory role, in this instance, the Labour Court can be said to have addressed its mind to the mandatory statutory criteria and made findings thereon? (para. 143)

The court stressed that it was extremely important that any recommendation of the Labour Court had to promote harmonious relations between workers and employers (para. 83-84). However, it stated:

> It is not the task of this Court to engage in a detailed description of how the Labour Court performed each step of its statutory role in this instance. (para. 144)

However, the Labour court must truly engage with the matters delegated to it.

3.5.4.2 Significance of the Case

The **High Court** had ruled in 2020 that the Minister for Enterprise, Trade and Employment, as well as the Labour Court would have acted *ultra vires* and declared the SEO to be invalid and Chapter 3 of the 2015 Act to be unconstitutional (FitzGerald, 2020). It criticised the Labour Court's mindset as not being neutral and competent enough to make valid expert decisions about SEOs' content. This was a strong step backwards with regard to establishing collective bargaining procedures and giving certain powers to the Labour Court. With reference to Article 15.2.1° of the Constitution, Anne O'Connell Solicitors (2021) stated that the High Court determined that too much legislative power of the *Oireachtas* had been delegated by the 2015 Act. This would be 'a standard-less delegation of law making (…) and one which would be almost impossible to challenge by way of judicial review'. The High Court found that the making of an SEO would require policy choices and the interests of a variety of stakeholders would have to be addressed. Concerning Chapter 3 of the 2015 Act the Judge found that the statutory language used was 'too imprecise to provide any meaningful guidance to the Labour Court' (Arthur Cox, 2020). The Labour Court would also have failed to provide appropriate reasoning for its decision (FitzGerald, 2020). This former judgment

demonstrates that giving legislative-like power to deal with concerns that originally lay within the remit of the social partners cannot be delegated from them or the parliament to the Labour Court without being undisputed. This issue might also arise due to concerns about democratic legitimation and social partner autonomy and expertise.

By overruling the High Court with regard to the valuation of SEOs, the **Supreme Court** issued a decisive judgment. In the *NECI* case, it ultimately ruled on the question of constitutionality of SEOs and overturned the High Court's judgment. Chapter 3 of the 2015 Act gives the Labour Court a statutory-like role when suggesting SEOs to the Minister. It also has a policymaking role in this context. The state hence leaves a high degree of decision-making to this traditionally voluntarist body and only provides the foundation for its decision-making. By declaring Chapter 3 of the 2015 Act constitutional, the Supreme Court emphasised that the *Oireachtas* could delegate its power in industrial relations matters to other state authorities. Paradoxically, this applies in particular where specific expertise is required for decisions, although the legislator must give sufficient guidance in the form of principles, frameworks and parameters for this (Anne O'Connell Solicitors, 2021). The Supreme Court held that the 2015 Act did contain sufficient guidance for the Labour Court. By issuing this decision, the Supreme Court protected the Labour Court against excessive civil court intervention, though according to Teague (2009), it can be observed that increasing civil court intervention in traditionally voluntarist matters and processes generally results in increasing legalism in collective issues.

The issue of increasing juridification which is core to the *NECI* dispute is indeed a highly controversial one. It is questionable whether determinations of the Labour Court can ever equate to arrangements of social partners, who directly represent the people and companies affected and are the expert in their matters, even if the court is provided with substantial guidance and capacities. Results in the collective realm arise not only as a result of analysis and determination, but from the dynamic of industrial relations, collective bargaining and collective action. The question could arise whether a legal means intended to strengthen collective bargaining might have an attenuating effect on it. So far, the provisions of the 2015 Act did not lead to a greater power balance but to increasing legalisation in terms of determining results. Although this might not contradict the constitution, it potentially contradicts voluntarism. The 2015 Act did not find

sufficient answers to the current challenges of employer legal activism and the lack of engagement in processes in the voluntarist system.

3.6 Conclusion

The Industrial Relations Acts aimed to balance the power in Irish industrial relations. However, they did not achieve this. Even the 2015 Act shows deficiencies in its implications. The legal means introduced by the Acts did not manage to balance the power between unions and employers and their representatives to the extent that the voluntarist system could function well and enable a substantial amount of free collective bargaining.

Taking a look into the future, new demands to increase collective bargaining come from the EU Minimum Wage Directive. The Directive demands that EU member states increase their collective bargaining coverage if it falls below 80 per cent.

4. The EU Minimum Wage Directive

State legal intervention may occur in other ways than by or based on national law. It can also occur based on European law, in particular based on EU directives that the EU Member States have to transpose into national law. As the EU states:

> A 'directive' is a legislative act that sets out a goal that EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals. (European Union, 2025)

As stated under Chapter 2, Part 3, one of the most remarkable developments at the EU level in terms of collective bargaining is the EU Minimum Wage Directive.

4.1 Purpose of the EU Minimum Wage Directive

As stated by the EU, the purpose of the Directive is to improve working and living conditions in EU countries by establishing frameworks in the area of minimum wages and the promotion of collective bargaining (EUR-Lex, 2025).

The term 'collective bargaining' is defined by the Directive as follows:

> For the purposes of this Directive, the following definitions apply: (…) 'collective bargaining' means all negotiations which take place according to national law and practice in each Member State between an employer, a group of employers or one or more employers' organisations on the one hand, and one or more trade unions on the other, for determining working conditions and terms of employment; (…).
>
> (EU Minimum Wages Directives, Article 3 (3))

According to the EU Minimum Wages Directive, EU member states are required to increase collective bargaining on wage setting by involving the social partners. The Purpose of the EU Minimum Wage Directive is to:

- promote the building and strengthening of social partners' capacity to engage in collective bargaining, especially at sector and cross-industry level;
- encourage constructive, meaningful and informed wage negotiations between social partners;
- act to guarantee the right to collective wage bargaining and prevent workers and trade union representatives suffering any employment discrimination;
- take measures to protect workers and trade union representatives, along with trade unions and employers' organisations, from any interference from one another or each other's agents or members in their establishment, functioning or administration;
- where the collective bargaining coverage rate is below a threshold of 80 per cent, provide for enabling conditions, either by law or after consulting social partners, and establish an action plan to increase that coverage.

These provisions, especially the provision to increase collective bargaining coverage where the coverage is under 80 per cent and to develop a corresponding action plan, are manifested in Article 4 of the Directive (see Appendix A).

Article 4 (2) of the EU Minimum Wages states correspondingly:

> In addition, each Member State in which the collective bargaining coverage rate is less than a threshold of 80% shall provide for a framework of enabling conditions for collective bargaining, either by law after consulting the social partners or by agreement with them. Such a Member State shall also establish an action plan to promote collective bargaining. The Member State shall establish such an action plan after consulting the social partners or by agreement with the social partners, or, following a joint request by the social partners, as agreed between the social partners. The action plan shall set out a clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage, in full respect for the autonomy of the social partners. The Member State shall review its action plan regularly, and shall update it if needed. Where a Member State updates its action plan, it shall do so after consulting the social partners or by agreement with them, or, following a joint request by the social partners, as agreed between the social partners. In any event, such an action plan shall be reviewed at least every five years. The action plan and any update thereof shall be made public and notified to the Commission.

It is stressed that the Directive should not affect the autonomy of the social partners and their right to negotiate or conclude collective agreements.

The Directive was meant to be transposed into national law by 15 November 2024. Ireland implemented its action plan in November 2025. As the action plan was published only at the time of the submission of this study, it will not be further evaluated here.

4.2 Is the EU Minimum Wage Directive a 'Game Changer'?

Interview participants answered the question of whether the EU Minimum Wage Directive will be a 'game changer' for Irish industrial relations.

Trade Unionist 5 says that the union side sees the EU Minimum Wage Directive as hugely transformative. He/she highlights that the role of the state would have to change due to the directive:

> *The state has a legal requirement by the directive to be involved. I would say in public commentary, the Irish state has been a passive bystander at best or a kind of a roadblock to collective bargaining at worst, whereas it now needs to become an advocate, a supporter of it. There needs to be an all of government approach.*

Trade Unionist 5 claims that there needs to be a culture change. One could not just leave it to the Labour Court, especially when the other side is not obliged to turn up. The Irish state would have to get active and implement the action plan.

Trade Unionist 6 also sees the current main focus for shaping Irish industrial relations on the EU Minimum Wage Directive.

Trade Unionist 2 also finds the EU Minimum Wage Directive important.

> *We see that as having a key part to play for Ireland and we want to hold this government or future government to make sure that they deliver it as it is intended. (…). And I think (…) that we need to promote collective bargaining. And the state needs to promote it.*

Trade Unionist 3 states that employers had turned their back on voluntarism and that would have to be rebalanced. As he/she states:

> *I think the directive once implemented in this country will further help to rebalance that. Because the existing mechanisms that we have, our Joint Labour Committees, cover just particular sectors, or Sectoral Employment Orders, cover particular sectors and regulate different aspects of the working relationship for those sectors and those workers within those sectors, but it does not rebalance it sufficiently in terms of employers needing to come to the table to negotiate with workers on a wide scale.*

Employer Representative 3 stresses that he/she does not see the Directive undermining the voluntarist system as it only favours the promotion of collective bargaining but does not mandate it. He/she states:

> *It is only the promotion of collective bargaining. Now, of course, that is difficult in itself. In terms of promoting it but yet not mandating it. So that is important that we do that. In terms of legal regulation, that is going to be difficult anyway, in light of the constitutional right to disassociate, because you would just argue then that it is void, that it is breaching employers' constitutional right not to recognise the union. So, anything that could legislate for it just would not, in our view, be feasible, because you cannot have a piece of legislation that is contrary to the constitution. So, that around the promotion then, and how that is done, our view is very much so that you have to ensure that that respects the constitutional right to disassociate. I suppose that is yet to be seen but what you can legislate for and regulate around collective bargaining is going to be difficult if it is to remain voluntary.*

So, what should be done to increase collective bargaining coverage?

Employer Representative 3 emphasises that the state is responsible for promoting but not for mandating. While concrete measures are still uncertain, he/she stresses the demand for measures that are constitutionally sound from the employers' point of view:

> *So, whatever the government legislates for, in our view, it cannot undermine the collective bargaining's voluntary nature as we have it. So, this voluntary landscape that we have in Ireland. The state absolutely needs to promote collective bargaining, but not mandate it. So, the question then is, how do you promote it? And for those measures to be constitutionally sound. (…). Mandatory collective bargaining would not be feasible. Or anything that would undermine an employers' right not to engage with the union, or not to have the union on site. So, any measures that would force employers into recognition just could not be legislated for because they would not be in compliance with the Constitution, because you cannot force employers to collectively bargain, no more than you can force an employee to join a union.*

With regard to future measures taken under the directive, one has to be careful to retain 'only' the promotion of collective bargaining, so that an employer still *can 'turn around and say "I operate a direct engagement situation"',* which, as Employer Representative 3 states, a lot of companies in Ireland do. As he/she explains:

> *They have no interest in engaging with the union. So even if there are obligations on them to promote, that they can still turn around and say, I want a direct engagement model. I do not want to recognise the union. I do not want to bargain with the union. So, it is getting those measures, constitutionally, legally sound in order to promote collective bargaining.*

State Representative 1 says that unions, employers and government now have to consider the EU Minimum Wage Directive very seriously when looking at Irish industrial relations to provide a corresponding framework for collective bargaining. He/she goes on:

> *So, it is got to be made easier for unions to recruit in employments that are currently non-union. And part of I think, whatever framework is developed, has to provide mechanisms by which trade unions can have access to workers.*

As he/she says, unions face major difficulties when trying to organise workers as they have no mechanisms for addressing them. They are not allowed to communicate with them to promote trade unionism or to tell them what trade unionism is and what the benefits are. As State Representative 1 states:

> *They have never experienced collective bargaining. So, it has got to be made easier for unions to actually organise in these employments. And that will require some, I think, pretty radical measures like, should they have an entitlement to disseminate information to provide documentation to workers; should they be free to appoint worker representatives in these employments and worker representatives would have a role in trying to encourage others to join and will be effectively protected.*

4.3 Evaluation of the EU Minimum Wage Directive

The EU Minimum Wage Directive has the potential to be transformative in terms of Irish collective bargaining. It depends on the concrete measures that a state takes within its own system of industrial relations whether it can successfully increase collective bargaining coverage or not. Ireland issued an action plan at the time of the submission of this study. Any concrete actions the state aims to take under this plan remain subject to further evaluation.

Interview participants consider the Directive to be very important for Ireland's voluntarist industrial relations landscape. The view was expressed that the state should become involved as a player and that there has to be a culture change in Irish industrial relations. It is expected that the Directive will foster employer engagement. However, measures taken under the Directive should not undermine voluntarism. In particular, trade union access to workers should be improved and it should be made easier for unions to organise workers.

In any case, Ireland has to take action to increase its collective bargaining coverage. In the LEEF Report, fostering employer engagement is a core suggestion with regard to

ways of increasing collective bargaining coverage. We therefore examine it in what follows.

5. Future Ideas: Make Employer Participation Mandatory

Interview participants commented on various aspects of employers' obligation to engage at sectoral and firm level.

In general, trade unionists think that mechanisms should be put in place to enforce employer participation, despite the existence of voluntarism, and favour the system becoming more legalistic in terms of enforceability. Employers should be obliged to participate and if they do not do so, the process should proceed without them. On the other hand, employer representatives see this as contradicting voluntarism. Also, they emphasise that forcing employers to participate is not the solution to the recent requirement on Ireland to increase collective bargaining coverage. Rather, a change of approach is necessary, also from the unions' side. Furthermore, there are a few approaches and suggestions in the LEEF Report for boosting collective bargaining coverage in Ireland as demanded by the EU Minimum Wage Directive.

Should employer participation be obligatory and state legal intervention used to enhance employer engagement? In what follows, we examine the mechanisms at sectoral and company level.

5.1 Make Employer Participation Mandatory at Sectoral Level

In the LEEF Report, the High Level Group considers that JLCs are potentially effective means of increasing collective bargaining coverage in Ireland. It examined statutory wage setting mechanisms and proposed ideas for reform in light of the EU Minimum Wage Directive. According to the LEEF Report (p. 9):

> The Group acknowledges that the JLC system is not now functioning optimally in its capacity. In light of this, the Group will explore options to increase employer engagement (…).

The LEEF Report (p. 10) states that where JLCs are established, they often do not function because of a lack of employer participation:

> At present, most EROs fall at the first stage, as employer representatives do not attend JLCs to participate in formulating proposals, or where they do, agreement cannot be reached at the negotiation stage.

In this context, the question is whether employers should be obliged to participate in the process and if that contradicts the traditional concept of voluntarism. What do the key actors of industrial relations think and what concerns do they have?

5.1.1 Make Employer Engagement Mandatory – Enabler of or Contradiction with regard to Voluntarism?

According to employee representatives, in their experience JLCs do not work because the employer does not engage in the process. They demand that the state put mechanisms in place to require employer participation.

As Trade Unionist 5 stresses, most JLCs do not work because the employer does not turn up.

Trade Unionist 2 states concerning JLCs that an audit is needed of the JLCs in existence as some of them do not function. Or there should be an examination of how they work. He/she says that further sectors of the newer economy should be explored which could be suitable for JLCs. Also, it is important to look at the representative structures of the actors involved and at the Labour Court with regard to the resources the court has available.

Trade Unionist 1 says that JLCs will be extended to new sectors and other parts of the economy and that implementation will be a major way of improving terms and conditions of employment.

Trade Unionist 3 explains:

> *When an employer does not turn up, it is not possible to progress with an Employment Regulation Order, which contains the pay and conditions for workers covered by that JLC. So, there are proposals to, in essence, be able to override the situation where the employer does not turn up. And so still an ERO could be made in their absence. Again, there are checks and balances within what is proposed before that actually occurs at the very end – again, looking for there to be a voluntarist system. But I suppose putting a mechanism in at the end of that system, if it does not actually work.*

He/she goes on:

> *So, we are operating in a voluntarist system. It is becoming somewhat more legalistic in terms of enforceability. And I do believe that is what we have sought around SEOs around the JLCs and EROs.*

Trade Unionist 1 says that in future employers should be obliged to participate in the JLC process in the way that has been suggested by the LEEF Report. As he/she states:

> *The system was already in place. The problem was, it would not work because employers would not engage in it. So, two key issues: Extend it to other parts of the economy where we have low pay and to ensure that employers participate to make them work. And if they do not participate, then it works without them.*

Trade Unionist 1 stresses that this is particularly interesting for low pay sectors like the meat industry where there are a lot of migrant workers and exploitation.

This kind of enforceability might be seen as in contradiction with voluntarism, as Trade Unionist 3 claims. He or she raise the question of whether it is *'hard voluntarism or soft enforceability'* and concludes that it might be somewhere in between. As he/she explains:

> *It certainly starts on a voluntary basis but more and more we have looked for the enforceability peaks at the very end of it, if ultimately we need it.*

On the employers' side, Employer Representative 4 states that the main issue employers associate with the JLCs system is *'the core issue of consensus'*. He/she claims:

> *I personally think that the current process or the current approach is not going to work unless it is consensus based.*

None of the JLC reforms has had a significant impact due to the failure to focus on the need for consensus. Employer Representative 4 perceives that the unions are focusing more on more regulation.

He/she says that the reason why JLCs were originally introduced was the existence of sectors in which low pay was a big issue. However, Employer Representative 4 explains that

> *the difficulty is that over those same number of years, we had a growing body of employment legislation. We have had the national minimum wage introduced. We now have the concept of the living wage being spoken about over the next couple of years as a commitment by government. So increasingly, employers in those sectors took the view that this is amounting to a second-tier minimum wage over and above what we have to deal with as a national minimum wage, as well as these other terms and conditions that are being forced on us and increasingly, just employers got hugely frustrated with that. And as we know, various legal challenges were raised to the processes and to the procedures.*

Employer Representative 4 outlines:

> *I think it is about a change of approach in terms of looking at the regulations and how the regulations should be made to work.*

He/she criticises that the approach taken is about regulation and not about building consensus with employers. However, it should be about *'building consensus with employers, with real employers in those sectors, to say, look, what are your problems, and how can the JLC system address those problems?'* As he/she states:

> *I am trying to think of a good example, say, hospitality and hotels. And if there were creative ideas to try and address the labour market shortages there, whether it is around, skilled people, chefs, etc, (...) then employers might be a lot more interested in sitting down with trade unions to say: 'Well, look, let us see, can we make something work here?' Whereas at the moment, that is not the case. It is about saying you have to pay more. And you have to comply with an extra level of regulation. And employers in those sectors have just had enough, and they are not prepared to go there again. So that is going to be a very difficult political issue to get employers to support in those sectors.*

Employer Representative 4 criticises the suggested changes to the JLCs as in his/her view the changes ultimately *'involve the removal of employer discretion where they are still opposing the establishment of a JLC, and if a JLC is imposed upon them, there is only one thing that is going to happen, and that is more legal challenges'.* He/she therefore calls the suggested system *'self-defeating'*.

In general, as Employer Representative 4 explains, employers in Ireland are increasingly concerned about significant changes in regulation and increasing employment rights, such as the introduction of statutory sick pay.

He/she sees the obligation for an employer to engage in the JLC process as contradicting the concept of voluntarism.

> *Because if you go back to first principles here, I mean, if you look to remove the whole concept of employer discretion on participation, how is that consistent with the central principle of voluntary participation in collective bargaining? It is not. So, it is inevitably ... it is going to lead to challenges.*

In the opinion of Employer Representative 4 this may lead to changes in the employers' approach.

> *A consequence of all of that is that we are going to see a much more stronger pushback from employers. And my strong preference would be that we would have a better engagement outside of the issue of regulation in the first instance, but to actually explore options that would increase employer and trade union engagement on the business issues of the day about how they might be addressed and how they might be supported by a changed JLC system. So, you know, issues about who does it? Who would it apply to? How do you involve people in the conversation? What are the kinds of big labour market issues of the day, and how might they be addressed, that are relevant to that particular sector?*

To the question of whether obliging employers to participate in collective bargaining contradicts voluntarism, State Representative 1 states that there can still be voluntarism if the parties are obliged to go through the process, but do not have to accept the outcome.

5.1.2 JLCs Compared with *Free* Collective Bargaining

However, there is a general criticism about using JLCs to increase collective bargaining coverage instead of conducting *free* collective bargaining that covers workers' terms and conditions on a broad scale. Trade Unionist 3 explains:

> *Because the existing mechanisms that we have, our Joint Labour Committees, cover just particular sectors, or Sectoral Employment Orders cover particular sectors and regulate different aspects of the working relationship for those sectors and those workers within those sectors, but it does not rebalance it sufficiently in terms of employers needing to come to the table to negotiate with workers on a wide scale.*

He/she thereby stresses that collective bargaining covers a broader range of matters than JLCs and SEOs do and therefore cannot compensate the wide-ranging *free* collective bargaining.

5.2 Foster Employer Participation at Company Level

In the LEEF Report, the High Level Group suggests promoting 'good faith engagement' at company level as a means to increase collective bargaining coverage in Ireland according to the EU Minimum Wage Directive. As the LEEF Report (p. 19) states:

> The view of the Group is that there is nothing inconsistent about encouraging parties to engage with one another, in good faith – and imposing an obligation upon them to try to do so – but at the same time not compelling parties to reach any outcomes or agreement.

The report outlines a certain process for good faith engagement, as well as the attitudes expected by and recommended to the participating parties.

According to the LEEF Report (pp. 21–22), there should be good faith engagement within a defined period of time after the trade union request. The employer should give 'genuine consideration' to it and provide the union with a 'clear, considered and reasoned response'. In case the employer fails to engage, the union can complain to the Labour Court. The latter can make a determination on how the employer has to act to comply with the good faith engagement process. Failure to comply allows the union to refer the issue to the Circuit Court.

The LEEF Report also suggests elements of good faith engagement, among those adhering to a reasonable timeframe, giving genuine consideration to issues raised, providing relevant information or providing a clear and reasoned response in a written form. It emphasises that good faith engagement does not require the parties to reach an agreement but stresses the importance of the process and engagement in it.

However, what do the industrial relations actors understand by 'good faith engagement' and what are their hopes and doubts?

5.2.1 The Core Idea behind 'Good Faith Engagement'

Trade unionists generally hope that good faith engagement will remove preconceptions and provide an opportunity to engage at the lowest possible level. It is stressed that the concept demands a certain mindset from both sides of the process that is different from the status quo. Trade unionists hope that if the process is carried out properly the unions will be recognised by the employers and will ultimately be able to conclude agreements as a consequence of good faith engagement, although the employer is not obliged in terms of reaching a result.

As Trade Unionist 1 states:

> *It obliges the employer to sit down with the trade union and have a discussion about terms and conditions of employment. It does not provide that the employer must recognise the trade union nor does it force the employer to make an agreement.*

He/she emphasises the importance of having a discussion. On the union side, the hope in those discussions would be that the parties would end up reaching agreement or recognition. However, if this does not happen, the employer is not obliged to agree. He can only be forced to engage. Time will tell how well this works.

Trade Unionist 6 describes good faith engagement as a real process:

> *It is not just an employer telling you information and saying, right, we have made the decision there, that is what you do. It is about actually negotiating properly and reaching an outcome with the input and with the participation.*

Trade Unionist 3 sees it as an opportunity to engage and to resolve issues at the lowest possible level. However, he/she is *'also conscious that we do still have a voluntarist system'*.

There is also the hope that the process of good faith bargaining removes preconceptions on the part of employers and unions. As Trade Unionist 2 states:

> *If you remove preconceptions and get people actually into a room, or there is an agreed menu of topics to be discussed, that it may prove to be the case that actually, collective agreements are more achievable, and possibly more desirable, from the employer point of view than people think.*

However, he/she admits that this will not be easy to achieve.

> *If we are starting from a position where an employer is just by ideology against any engagement with trade unions and does not even have to consider it, if they then have to, at least, sit down and engage on topics and are failing to do so that they risk a penalty in the lower courts, then that seems to me that the potential reputational damage rather than the financial damage may be enough to get employers to think again about their approach to things and at least, if we were to begin to make some progress there, I think that landscape could change.*

However, if this approach does not work, one has to look at other methods to change the industrial relations landscape, including constitutional change. However, it is worth just trying to bring the parties to the table instead of compelling them to negotiate.

Employer representatives see the need to develop a *'good faith mindset'*. However, they fear an automatic mechanism for recognising unions, which would possibly contradict the idea of voluntarism. They also fear that good faith engagement might end up becoming collective bargaining *'through the backdoor'*.

Employer Representative 1 emphasises that first of all it is about recognising that a union exists and represents a group of workers or the entire workforce who have decided to join this union. Discussion in good faith can be entered into, once they have got *'over this hurdle'*. As he/she states:

> *When you are going in there, you have to try to leave your 'baggage at the door'. So, if you do not like unions, you do not recognise unions, you have never dealt with them before and you do not want to meet with them, you have to try and get over that hurdle in order to engage in good faith. So, come to the door without all the previous baggage that you might have had, or the previous way of thinking that you might have had, and sit down and recognise that your employees have decided and elected to join a union, and these are the people that they want to represent them, and just listen to what they have to say and try and put yourself into there or understand where they are coming from.*

He/she stresses that good faith bargaining is about respect between the parties involved and changing mindsets. Although there is no obligation to reach an agreement, there is an obligation to accept the decision of the workforce to let a union represent them and their

interests. However, Employer Representative 1 is aware that it is difficult for employers to change mindsets and set biases aside, so the government would have to promote it, being aware that Irish industrial relations are still voluntary. As he/she claims:

> *It is about changing mindsets. And this is why I think training is very important here, and not just from the trade union perspective, but from an employer perspective as well.*

Another Employer Representative finds good faith engagement a *'nice idea'* that does not work in practice. As Employer Representative 4 states:

> *The real prize here is mandatory collective bargaining, and the unions will simply see this as a stepping stone on their way to looking to secure that ultimately, being the express goal of the trade union movement. Their strategy has been fairly obvious, which is that they have a concern here about the primacy of the Irish constitution around the freedom of association and conversely, therefore, disassociation.*

Employer Representative 3 agrees in terms that *'the first thing employers would need to know or be aware of is that it is not going to give rise to mandatory recognition, so it is not going to be collective bargaining'.*

5.2.2 Constitutional Obstacles?

According to *Industrial Relations News* (Vol. 20, 2025) IBEC stated in May 2025 that even the process of good faith bargaining, based on a single meeting, might face some constitutional challenges. In this context, IBEC compared the definition of collective bargaining in Article 3 of the EU Minimum Wage Directive with the definition of collective bargaining in the 2015 Act and concluded that for both definitions there must be 'multiple engagements and negotiations'. Therefore, good faith engagement did 'not constitute collective bargaining but may be a useful instrument in promoting collective bargaining as is required by the Directive'. However, as *Industrial Relations News* cite IBEC in its article, the corresponding process 'must begin with acknowledging that it is neither possible nor desirable to seek any mechanism by which parties can be obliged to collectively bargain or reach an agreement'. IBEC claimed that good faith engagement 'could not be used as a vehicle to enforce trade union recognition or collective bargaining on an employer'.

Employer Representative 3 also sees constitutional obstacles arising:

> *For an employer, I think it is important in terms of follow up that companies do not find themselves having another meeting and another meeting, because then*

> *you are into kind of implied recognition, because you are having this pattern of meetings or continuous meetings, and then you are into implied recognition.*

A certain fear of an automatic and sudden union recognition exists among employer representatives. They refer to the fact that Irish industrial relations are voluntarist, which also includes the entitlement to non-binding Labour Court recommendations of the social partners. Also, the Labour Court *'cannot mandate collective bargaining*', as this would be unconstitutional.

Employer Representative 3 explains:

> *So, from an employers' perspective, the promotion was just to meet the union and then turn around, if they want, and say: 'We have met you. We have heard you out. We have done all that. But now we are exercising our right, as it is our constitutional right, not to recognise you for collective bargaining purposes and to go back to our direct engagement model.'*

Employers do not want to end up with a legally binding and enforceable order of the Circuit Court for not complying with good faith engagement. The concept of good faith engagement must be in accordance with the Irish Constitution.

Employer Representative 3 emphasises that Ireland's voluntarist industrial relations system works well and that there are many companies who do unionise and who have a good relationship with unions, although there is no legal requirement to recognise a union. He/she stresses the importance of the LEEF Report's *Code of Best Practice* behind the idea of good faith bargaining and that employers must not have a dismissive attitude towards the process as this would not be in compliance with the core idea behind the concept. As he/she states *'it is not just engagement. It is a good faith engagement*.' Employers have to come to the table, listen to the workers' representatives and then go back with a response. Employer Representative 3 says that, in the end, there is a need to promote collective bargaining and it will be promoted by good faith engagement in the first place. However, employer must not be obliged to recognise trade unions.

While some employer representatives see union recognition as an undesirable consequence of good faith bargaining, Academic Expert 2 sees it as the foundation on which good faith engagement can even take place and therefore sees recognition as an enabler for coming together on the basis of good faith. As he/she puts it:

> *First of all, before there is a prospect of good faith engagement at all, you would have to have recognition. How can you engage with somebody, a union, and you say: 'I do not want to recognise you'? 'I do not really want to negotiate with you'.*

> *Now, how can you have good faith bargaining there. There is no basis for it. It is the cart before the horse. After you recognise the union, then the opportunity for good faith bargaining arises. It does. That is the history of every recognition in the aftermath of a recognition promise.*

On the side of the state, State Representative 3 emphasises the importance of the union articulating the benefits for an employer of engaging with them:

> *I suppose the union side would argue that unless there is some kind of financial penalty, or sanction of some kind or other, then the employers will not get into the room. And I think, depending on the circumstances it is possible that it could start a relationship, the appetite a company might have for actually listening meaningfully, having been forced into a room, (…). I really think it depends on the circumstances, and probably only if the trade union were in a position to articulate the benefit of engaging with them and I think that is a key issue.*

Academic Expert 4 states that if there is no pressure behind voluntary engagement on the employers' side it might happen that

> *employers could say: 'Nice knowing you. We will come back in three more years and we will have a nice coffee again and have a chat' and nothing will issue. I mean, what unions are hoping is that employers will see that they do not have horns, you know, they are not the devil incarnate. And some employers at least will say: 'Look, we might as well deal with them and negotiate with them. But we genuinely do not know'.*

5.3 Evaluation of the Issue of Making Employer Engagement Mandatory

Concerning the issue of employer engagement at **sectoral level**, interviewees generally perceive that obliging employers to engage does have a certain impact on the traditional concept of voluntarism. This is perceived either as negative or positive. Employer representatives favour a more consensus-based system instead of being forced to participate in processes. It is further important to recognise that JLCs cover only a certain number of issues that can be covered by collective bargaining and can therefore be seen as being more restricted than free collective bargaining.

According to the ILO (2025), typical issues covered by collective bargaining include wages, working time, training, occupational health and safety and equal treatment. The range of topics is thus very wide and besides, the process of collective bargaining itself, consisting of the dynamic of conflict and cooperation, leads to positive experiences and side effects with regard to the industrial relations partners. Hence, sectoral processes cannot amount to 'real' collective bargaining.

On the contrary, good faith engagement at company level can start a process that results in *free* collective bargaining, without determining certain results, as in the case of JLCs.

Concerning the issue of employer engagement at **company level** within the framework of 'good faith engagement', it is seen as a soft process that is able to remove preconceptions and promote collective bargaining. It is perceived as being about changing mindsets. It is assumed that the recognition of the existence of the union is the basis of good faith talks. However, the issue of recognition is also perceived as a threat. Employers fear mandatory union recognition and the pressure to participate in collective bargaining arising via good faith engagement and question its constitutionality.

It is, however, questionable how constitutional issues can arise via good faith engagement, even if it leads to collective bargaining or recognition, as feared by employers. According to the ILO (2025):

> Collective bargaining is a fundamental right. It is rooted in the ILO Constitution and reaffirmed as such in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Collective bargaining is a key means through which employers and their organizations and trade unions can establish fair wages and working conditions. It also provides the basis for sound labour relations. (…) The objective of these negotiations is to arrive at a collective agreement that regulates terms and conditions of employment.

Also, Article 28 of the EU Charter of Fundamental Rights provides a 'Right of Collective Bargaining and Action'. It states:

> Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

The same is affirmed by the European Social Charter, Article 12 of the Community Charter of the Fundamental Social Rights of Workers and the European Court of Human Rights' (ECHR) interpretation of the right to *freedom of association*. The right to bargain collectively is part of the EU's mindset, which is also displayed in Article 152 of the Treaty on the Functioning of the European Union (TFEU), which acknowledges this right and declares that the EU 'recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.' Claiming unconstitutionality because of 'pressure' to participate in collective bargaining is therefore legally pointless.

Good faith engagement should rather be seen as an opportunity to start conducting free collective bargaining in the voluntarist sense and thereby to avoid legal regulation by other than the social partners themselves.

The issue of union recognition will be dealt with separately in **Chapter 5** of this thesis.

There are opportunities to expand collective bargaining coverage in Ireland at both sectoral and company level. However, despite the potential obstacles raised by the interviewees, these measures can work only if they are supported by trade unions and employers and their associations and implemented by the state. These obstacles, such as fears of negative effects on voluntary participation or possible unconstitutionality, must therefore be overcome.

6. Conclusion

The balance of power in industrial relations can only partly be balanced by state legal intervention. While individual labour law is generally inappropriate in terms of balancing the power in industrial relations, collective labour law, in the form of the Industrial Relations Acts, is appropriate and aimed to protect or reestablish the voluntarist power balance. However, it showed significant deficiencies in reaching this goal. It appears that state legal intervention is an important instrument in Irish voluntarism, but the law alone cannot sufficiently rebalance power in the labour market to enable true voluntarism to happen.

The EU Minimum Wage Directive calls on EU Member States to take measures to increase collective bargaining if collective bargaining coverage is below 80 per cent, which is the case in Ireland. Ireland had issued an action plan to strengthen collective bargaining at the time of the submission of this study, which remains subject to further evaluation. Regardless of this, one future approach could be to oblige employers to engage in collective bargaining at company as well as at sectoral level. In particular, good faith engagement is a potentially effective means of increasing employer engagement in collective bargaining and thereby balancing the power between the industrial relations actors, while not contradicting the Irish voluntarist system.

PART 4: CONSTITUTIONAL TRADE UNION RECOGNITION

1. Introduction

In this part of the thesis, the question of the existence of constitutional trade union recognition will be further evaluated. Therefore, Article 40.6.1(iii)° of the Irish Constitution and its interpretation with regard to the extent of freedom of association will be evaluated and legally analysed (2). The issue of company access for trade unionists and of protection from discrimination for unionists and workers will also be evaluated (3). It will also be examined whether a constitutional change would be needed to implement constitutional trade union recognition (4). Another question concerns whether constitutional trade union recognition can be compensated by other means (5) and what the fears and obstacles may be with regard to constitutional union recognition (6).

2. Interpretation of Article 40.6.1(iii)° of the Irish Constitution

Within the Irish Constitution, *freedom of association* and thereby the right to form trade unions is guaranteed by Article 40.6.1(iii)°:

> The State guarantees liberty for the exercise of the following rights, subject to public order and morality: (…) The right of the citizens to form associations and unions.

As the right of association is a qualified one, the Constitution states that 'laws, however, may be enacted for the regulation and control in the public interest of the exercise of the foregoing right'.

As stated in Chapter 2, Part 3, the existence of constitutional trade union recognition for the purpose of collective bargaining is highly disputable in Ireland. Among interview participants, opinions differ concerning whether trade union recognition is a constitutional right that arises from Article 40.6.1(iii)° of the Irish Constitution.

2.1 Opinion: Union Recognition Is Not Inherent in the Constitution

Trade unionists who deny a constitutional right to trade union recognition state that people have a right to join trade unions and unions are allowed to organise strikes, but the law does not require employers to recognise unions for the purposes of collective bargaining. An explicit right to union recognition is not seen as being embodied in the

Constitution. It appears that trade unionists who take this view see it as a 'given legal status quo' and therefore accept it and do not challenge this view.

Employer representatives explicitly refer to the right of dissociation. There is no employer representative who sees union recognition as immanent in the Irish Constitution. Union recognition is even seen as in contradiction to the traditional concept of voluntarism. As Employer Representative 2 states:

> *What we understand as voluntarism is around the fact that there is no obligation for businesses operating in the Irish state to recognise or collectively bargain with the trade union. So, there is absolutely a right to trade union membership. But there is no obligation on an employer to recognise that trade union for the purposes of collective bargaining.*

Employer Representative 3 agrees with this, referring to the employers' right of disassociation. He/she concludes:

> *So, we would say then that there is a constitutional right for an employer not to recognise the union, not to engage with the union and therefore not to bargain with the union.*

State Representative 2 stresses that the question of whether the Irish Constitution contains a right to union recognition is a matter of discussion among legal experts and it has been not legally determined by the courts so far. As a result, to date there is still no right to union recognition for the purpose of collective bargaining.

Another state representative sees the link between the Constitution and union recognition not in terms of the Constitution itself, but in statute law that may come into being under it. State Representative 1, one of the main experts in Irish labour law and industrial relations, says:

> *I have yet to hear anybody making a convincing argument that the Constitution precludes legislation on collective bargaining. (…). The Constitution does not provide a right to have the union recognised. But it does not prohibit laws that could do that. There is no legal authority for the proposition that it would be unconstitutional to enact laws requiring employers to deal with trade unions. (…) And collective bargaining is only a value if it results in a collective agreement.*

Furthermore, he/she notes that the discussion about union recognition often refers to voluntarism in the sense that mandatory recognition would not fit the voluntarist system on the grounds that there is no compulsion on either side to negotiate.

2.2 Opinion: Union Recognition Is Inherent in the Constitution

However, some key actors of Irish industrial relations do see union recognition as being inherent in constitutional Article 40.6.1(iii)°.

Trade unionists who hold this opinion declare that union recognition is not generally accepted as a feature of the Irish Constitution, although it should be. As Trade Unionist 5 states:

> *You do not join a union for the fun, for the craic. You join it because you want access to collective bargaining to address your issues when that is denied to you.*

He/she calls the Irish Constitution *'toothless'* as in Ireland no constitutional right to trade union recognition has been recognised. Trade Unionist 5 argues that *'if you have a constitutional right of freedom of association, but you cannot exercise that right, it is not much of a right'.*

Some trade unionists also raise the question of the relationship between union recognition and voluntarism, though from a different perspective from the employers' side. As Trade Unionist 4 says, the problem is, if the employer does not engage with the union *'who is that voluntary for?'* He/she thereby criticises that voluntarism is used as an excuse for non-recognition.

The fact that union recognition must also be interpreted in light of its legal European and international milieu is stressed by a further interview participant. Academic Expert 2 emphasises that Ireland is the only European country having such a problematic discussion on union recognition. However, as he/she states, there is no *'constitutional obstacle'* as union recognition is a constitutional right anyway. This is underpinned by national and EU jurisprudence, as well as international standards. Academic Expert 2 stresses the role of the ECHR in terms of the importance of the *freedom of association* and the Court's interpretation of this right.

2.3 National Jurisdiction Concerning Constitutional Union Recognition

In the past, a few court judgments hinted that there is no obligation for an employer to negotiate with a union, for example *EI Co Ltd v Kennedy [1968] IR 69*, *Dublin Colleges ASA v City of Dublin VEC [1982] 1 J.I.S.L.L 73* or *Abbot and Whelan v ITGWU [1982] 1 J.I.S.S.L 56.* In the latter, judge McWilliam, J claimed that 'the suggestion (…) that there is a constitutional right to be represented by a union in the conduct of negotiations

with employers (…) in my opinion could not be sustained'. The judge claimed that there 'is no duty placed on any employer to negotiate with any citizen or body of citizens'. This was also argued in *Association of General Practitioners v Minister of Health [1995] WJSC-HC 86* and the *Ryanair* case, in which judge Geoghegan, J said that 'as a matter of law Ryanair is perfectly entitled not to deal with trade unions'.

However, the Irish Supreme Court recently ruled on *freedom of association* in the *Unite case*. Concerning the interpretation of Article 40.6.1(iii)°, the court states:

> Article 40.6.1(iii)° of the Constitution does not itself expressly guarantee a right to strike. However, it does guarantee the right of citizens to form associations and unions. As such it must be understood to recognise the legitimacy of trade union activity. While such unions are not the only bodies protected by freedom of association, they were perhaps the principal object in view in 1937. The right to form unions would be of little benefit if the activities of the union and its members were to be regarded as presumptively unlawful. Whereas the common law insisted on seeing employment as the exercise of the freedom of contract between an individual and his or her employer, and thus ignoring the inequality of bargaining power, the organisation of employees in a trade union offered the possibility of balancing the collective power of the employees and the economic power of their employer, allowing issues in relation to contract to be resolved by collective bargaining and disputes to be pursued, if necessary, by collective action. (para. 59)

The Supreme Court thereby emphasises that not only the existence of trade unions and the right to join a union, but also trade union activity itself is legitimate and constitutes an integral part of *freedom of association*. Without the recognition of such activity, the right to join a union is meaningless. Unions must be recognised not only for their existence but for the realisation of their goals, primary by collective bargaining and, if necessary, by collective action. As the court states, Article 40.6.1(iii)° of the Irish Constitution must 'be understood to recognise the legitimacy of trade union activity'. The court decision is a milestone judgment in terms of the interpretation of Article 40.6.1(iii)°. It highlights the need to balance the power in industrial relations; as the court puts it, 'balancing the collective power of the employees and the economic power of their employer'. It can be seen as a new and highly relevant legal development with regard to how the Irish Constitution has to be interpreted in terms of union recognition.

2.4 *Freedom of Association* in International and European Norms

The topic of trade union recognition is also dealt with in international and European norms and must be interpreted in light of such, as Ireland is part of the international and European community and has ratified a variety of international conventions.

The interpretation of *freedom of association* and thereby Article 40.6.1(iii)° of the Irish Constitution is also to be seen in light of international and European law, jurisprudence and standards.

At **international level**, one finds a few regulations concerning the meaning of *freedom of association*.

According to Article 22 (1) of the *International Covenant on Civil and Political Rights*, everyone 'shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests'.

Furthermore, Article 8 (1) of the *International Covenant on Economic, Social and Cultural Rights* requests that states' parties ensure the 'right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interests'. It furthermore stresses the right of trade unions to function freely and the right to strike.

The ILO further states that 'collective bargaining cannot begin until the employer recognises an organisation for that purpose' (ILO, 1978, p. 28) and that employers 'will give such recognition only if they believe it to be in their interest or if they are legally required to do so'.

The *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)* stresses in its preamble that recognition of the principle of freedom of association is a means of improving conditions of labour and of establishing peace. As Article 10 says:

> In this Convention the term "organisation" means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

In the preamble of the *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)* there even is a differentiation between the right to organise and the right to bargain collectively. Furthermore, Article 4 contains the following:

> Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

There are also a number of important legal remarks on the topic of freedom of association and collective bargaining at the **European level**.

Article 11 of the *European Convention on Human Rights* concerns the freedom of assembly and association. It states that everyone 'has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests' (1). No restriction can be placed on these rights 'other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others' (2).

The *European Social Charter (revised) (ETS No. 163) (1996)* states in Part I that all 'workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests' (5) and 'the right to bargain collectively' (6). This is further explained in Articles 5 and 6:

> **Article 5** – The right to organise
>
> With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, (…)
>
> **Article 6** – The right to bargain collectively
>
> With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:
>
> 1 to promote joint consultation between workers and employers;
>
> 2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
>
> 3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise:
>
> 4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

In the *Charter of Fundamental Rights of the European Union (2000/C 364/01)* the freedom of assembly and association is prescribed in Article 12:

> 1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
>
> (…)

As formulated in Article 28 in the section 'Solidarity', the right of collective bargaining and action is described as follows:

> Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

One of the most striking cases in the context of union recognition is *Demir and Baykara v Turkey [2008] ECHR 1345 (Demir* case*)*, in which the ECHR emphasised that the right to enter a collective agreement is one of the principal means for trade unions to protect their interests (C.1.129.). Article 11 of the Convention protects the 'occupational interests of trade-union members by the union's collective action, the conduct and development of which the Contracting States must both permit and make possible' (para. 140). As the court stated:

> As to the substance of the right of association enshrined in Article 11 of the Convention, the Court has taken the view that paragraph 1 of that Article affords members of a trade union a right, in order to protect their interests, that the trade union should be heard, but has left each State a free choice of the means to be used towards this end. What the Convention requires, in the Court's view, is that under national law trade unions should be enabled, in conditions not at variance with Article 11, to strive for the protection of their members. (para. 141)

However, the court stated that concerning the right to enter collective agreements, Article 11 would not secure any particular treatment of trade unions, such as a right to enter into collective agreements (para. 142). It refers to the case of *Wilson, National Union of Journalists and Others* (§44) with regard to the statement that a union had to be able to try to approach the employer successfully in terms of listening to what the union has to say (para. 143). The ECHR ruled:

> As a result of the foregoing, the evolution of case-law as to the substance of the right of association enshrined in Article 11 is marked by two guiding principles: firstly, the Court takes into consideration the totality of the measures taken by the

> State concerned in order to secure trade-union freedom, subject to its margin of appreciation; secondly, the Court does not accept restrictions that affect the essential elements of trade-union freedom, without which that freedom would become devoid of substance. These two principles are not contradictory but are correlated. This correlation implies that the Contracting State in question, whilst in principle being free to decide what measures it wishes to take in order to ensure compliance with Article 11, is under an obligation to take account of the elements regarded as essential by the Court's case-law. (para. 144)

Furthermore, the Court emphasised that the topic at hand is subject to the evolution and certain developments in industrial relations. The Convention is a living instrument and must be interpreted in light of recent conditions and developments in international law, in particular ILO Convention No. 98, and in connection with fundamental democratic values. The ECHR concluded:

> In other words, limitations to rights must be construed restrictively, in a manner which gives practical and effective protection to human rights. (para.146)

There are also new and striking legal developments at EU level that cover aspects of the topic. The *EU Minimum Wage Directive* outlines that the aims of a trade union are 'inter alia, to promote the well-being of its people and to work for the sustainable development of Europe based on a highly competitive social market economy, aiming to ensure full employment and social progress, a high level of protection and improvement of the quality of the environment, while promoting social justice and equality between women and men' (1) and refers to Article 3 of the *Treaty on European Union (TEU)*. It also refers to Article 151 of the *Treaty on the Functioning of the European Union (TFEU)* which

> provides that the Union and the Member States, having in mind fundamental social rights such as those set out in the *European Social Charter*, have as their objectives, inter alia, the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection and dialogue between management and labour. (2)

The Directive stresses furthermore that 'Article 28 of the Charter provides for the right of workers and employers, or their respective organisations, in accordance with Union law and national laws and practices, to negotiate and conclude collective agreements at the appropriate levels' (3). It also states that 'Principle No 8 of the Pillar provides that the social partners are to be consulted on the design and implementation of economic, employment and social policies according to national practices and that they are to be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action' (5). It stresses a right

to bargain collectively, while excluding an obligation to conclude collective agreements. As it states, '[i]n order to respect the autonomy of the social partners, which includes their right to collective bargaining and excludes any obligation to conclude collective agreements, the threshold of 80% of collective bargaining coverage should only be construed as an indicator triggering the obligation to establish an action plan' (25). It also stresses that 'Member States' collective bargaining coverage rates vary significantly owing to a number of factors, including national tradition and practice as well as historic context. This should be taken into account when analysing progress towards a higher collective bargaining coverage, particularly with regard to the action plan provided for in this Directive' (25).

In Article 3 (3) the Directive defines collective bargaining as the follows:

> 'collective bargaining' means all negotiations which take place according to national law and practice in each Member State between an employer, a group of employers or one or more employers' organisations on the one hand, and one or more trade unions on the other, for determining working conditions and terms of employment.

Furthermore, Article 4 emphasises the aim of engagement in collective bargaining:

> **Article 4**
>
> Promotion of collective bargaining on wage-setting
>
> 1. With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall:
>
> (a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, in particular at sector or cross-industry level;
>
> (b) encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting;
>
> (c) take measures, as appropriate, to protect the exercise of the right to collective bargaining on wage-setting and to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting;
>
> (d) for the purpose of promoting collective bargaining on wage-setting, take measures, as appropriate, to protect trade unions and employers' organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

(…)”

2.5 Evaluation of the Existence of Constitutional Union Recognition

Among the interview participants, as already mentioned, opinions differ concerning whether trade union recognition is a constitutional right that arises under Article 40.6.1(iii)° of the Irish Constitution. While some key actors deny a constitutional right to union recognition, others see it as being immanent in the fundamental rights contained in Article 40.6.1(iii)°.

Generally, neither side questions the right of association in the sense of a constitutional right of the individual to join a trade union for a common purpose. However, the right of a union to be recognised for the purpose of collective bargaining is disputed and is seen as partly contradicting voluntarism. It is claimed on the other side that voluntarism cannot exist without union recognition.

The employers’ side claims that Article 40.6.1(iii)° also contains a right to disassociate as the reverse side of *freedom of association*.

The topic of union recognition is not a matter of opinion, however, but a legal question. Answers of interviewees reflect only how the issue is currently perceived in Irish industrial relations. Therefore, the issue will be legally examined in what follows.

The question of whether a right to union recognition exists under Article 40.6.1(iii)° of the Irish Constitution is a matter of national, European and international law.

2.5.1 Evaluation of International Implications

It is questionable whether Ireland is compliant with **ILO** provisions regarding union recognition. Although the ILO (2012) acknowledged that Irish industrial relations take place within the framework of a voluntarist system, it stressed that Ireland would have to ‘ensure respect for the freedom of association and collective bargaining principles’ (ILO, 2012, p. 231). D’Art (2020, p. 100) calls it a less than satisfactory solution that in a voluntary system unions can persuade an employer to recognise them only by industrial action and sees ‘little sign here of a convergence with ILO principles’.

Workers join trade unions for the protection and promotion of their economic and social interests, hence with a certain aim. This aim cannot be realised by mere formation of a

collective body but has to be realised by taking action. It is apparent that the international norms and standards concerning the right to form a union do not provide only for formation, but also – and particularly – for realising their ultimate aims. The primary means by which a union may achieve its aims is collective bargaining.

However, collective bargaining requires that both sides of the labour conflict take part in negotiations and thus recognise each other. Without that, collective bargaining de facto cannot take place. According to the ILO, 'collective bargaining cannot begin until the employer recognises an organisation for that purpose' (ILO, 1978, p. 28). Merely forming a union without any negotiating capacity or opportunities, or a realistic option of defending workers' interests on that basis, leaves the core intention underlying the right to form unions under *freedom of association* meaningless.

2.5.2 Evaluation of European Implications

At the level of the **European Union**, the right to form trade unions 'for the protection of their interests' – thus to achieve a certain aim – is stressed by European regulations. The European Union further emphasises the right to bargain collectively.

The *European Social Charter* explicitly distinguishes between the right to organise and join a trade union (Article 5) and the right to bargain collectively and the duty of the parties to promote joint consultation with a view to regulating terms and conditions of employment (Article 6). It considers both to be equally important. Taking recognition as a basis for collective bargaining, the absence of recognition would mean that although Article 5 of the *European Social Charter* is fulfilled, Article 6 is not. According to the *Charter of Fundamental Rights of the European Union*, workers and employers, or their representatives, have the explicit right to negotiate and conclude collective agreements. This right cannot be exercised without mutual recognition for that purpose.

The *Demir* case calls into question Ireland's compliance with the requirements of the ECHR and the European Convention of Human Rights (Wallace et al., 2013, p. 45). The court adopted and applied the functional interpretation of union recognition, it being the practical realisation of *freedom of association* and thereby deviated from its former jurisprudence (D'Art, 2020, p. 96). The case constitutes the most important precedent for assessment of *freedom of association*. Ireland is obliged to comply with the elements the ECHR considers fundamental in its decision-making. The Court emphasised that *freedom of association* must be a right of practical relevance and not remain a theoretical and

illusory legal construct (para. 66). It concluded that the right of a union to bargain with an employer is inherent in *freedom of association* (para. 154). Entering into a collective agreement is one of the principal means by which unions may protect their interests, which is why unions must be heard. This approach is entailed by the very existence of human rights.

The *EU Minimum Wage Directive* was drafted against the background of fundamental social rights, such as those set out in the *European Social Charter*. It aims, among other things, at encouraging negotiations and the conclusion of collective agreements, while respecting the autonomy of the social partners. National traditions such as voluntarism should be respected and any obligation to conclude collective agreements is excluded. However, the Directive itself defines 'collective bargaining' as a process for determining working conditions and terms of employment. Thus, the achievement of real-world results is inherent in the Directive's fundamental aims. This original purpose cannot be achieved without union recognition.

In the European Union, Member States are increasingly dependent on and connected to each other. According to Dobbins et al. (2020, p. 76-77), however, Ireland differs from other Western European countries by having fewer institutional possibilities to extend its collective bargaining coverage. This derives from the concept of voluntarism and makes it even more important that there be strong negotiating partners in Ireland on an equal footing, who recognise each other for the purpose of collective bargaining. As stated by D'Art and Turner (2007), Ireland is in a 'relatively unique position among the Western democracies' if union recognition remains voluntary instead of being regarded as a constitutional right.

2.5.3 Evaluation of National Implications

According to Dobbins et al. (2020, p. 75), compared with other countries 'Ireland remains unique among so-called "Anglophone" countries in not legislating for statutory union recognition for collective bargaining purposes'. Some Anglophone countries are highly juridified, but they have managed to combine law with voluntarism and do not to see both as a contradiction (Forsyth et al., 2017; Wood and Goddard, 1999; Godard, 2003).

In Ireland, the courts historically have neglected the existence of a right to union recognition, as stated in Chapter 2, Part 3. The courts have ruled that recognition shall remain a voluntary option (Wallace et al., 2013, p. 39), which was recently stressed once

again in the *Ryanair* case. However, this can be traced back to 'the individualist orientation of the common law and its insensitivity, if not hostility, to collectivism' (D'Art, 2020, p. 95). As D'Art (2020, p. 96) puts it, 'It ignores the origin, function and purpose of freedom of association'. As stated in Chapter 2, Part 2, jurisdiction is only one legal opinion, expressed in a court decision (Kelsen, 1967, p. 240). In jurisdiction, the judge interprets the Constitution in a legally sound but still subjective way. However, the Constitution is a dynamic concept, sometime referred to as a 'living document', which may be adapted to changing times (*Sinnott v Minister for Education [2001] IESC 63*). This means that jurisdiction can change and develop over the course of time. Equally in *McGee v The Attorney General [1973] IR 284*, judge Walsh, J pointed out the flexible nature of the Irish Constitution and its ability to adapt to changing times and values.

The Irish Supreme Court can overrule its preceding decisions to ensure that its jurisdiction remains flexible and adapts to changing times and circumstances. Already the *Constitutional Review Group* (1996, p. 316) established by the Irish government in 1995, concluded that *freedom of association* may be rendered illusory if employers were not obliged to recognise a union representing their companies' workers. It left the issue to the government and the Oireachtas to deal with. The fact that jurisdiction adapts to changing times is shown by the current Irish Supreme Court judgment in the *Unite* case, in which it was stated that the right to form trade unions '*must be understood to recognise the legitimacy of trade union activity'*. It appears that this judgment constitutes a turning away from the 'tradition of union hostility' that can be observed in previous Irish court judgments. The Irish Constitution is an expression of the will and values of the Irish nation. A nation and its people change over time, as do the nation's values and prevailing ideas.

2.5.4 The Right to Disassociate

The constitutionally guaranteed *freedom of association* contains a right to associate, as well as a right *not* to associate, which is granted to individual Irish citizens (*Educational Company of Ireland v Fitzpatrick [1961] IR 345*).

The right of disassociation, which to the employers' side is fundamental when it comes to union recognition, is the flip side of the constitutionally guaranteed *freedom of association*. While the right to associate entitles individuals to a positive right that can be exercised collectively, the right to *not* associate 'aims at protecting the individual against

being grouped together with others with whom he or she does not agree and for purposes of which he or she does not approve' (D'Art, 2020, p. 86). This right concerns individuals and their right not to join an association or trade union – but is not aimed at employers and their freedom to collectively bargain or not. It is, like *freedom of association*, an individual right.

The right *not* to associate is therefore not relevant to the topic at hand, which is the subject of a conflict of collective interests at the level of industrial relations. *Freedom of association* is exercised collectively; however, it is primarily an individual right aimed at safeguarding individual human rights. In the Irish Constitution, as well as in other European constitutions, such as the German Constitution (the Basic Law or *Grundgesetz*), the right of dissociation protects the individual. As D'Art (2020, p. 102) states, '[a]cross the western world, no extant legislation on statutory recognition requires an employer to join a union but merely to recognise and negotiate with it. Logically, it would be difficult for the employer to disassociate from an organisation of which he or she is not a member.' The right *not* to associate is hence not related to the relationship between employers' or workers' organisations and their interaction. Therefore, this core argument against constitutional union recognition becomes meaningless.

2.5.5 Conclusion

In light of international and European norms and standards and the development of national and European case law, the non-existence of constitutional union recognition and the restriction of *freedom of association* to a mere right to join and form a trade union cannot be justified.

As D'Art (2020, p. 83) states, the 'freedom to associate is a hallmark of a democratic state'. It is an expression of human rights and individuals must therefore be enabled to exercise it to its full extent. Lynch (1998, p. 227) emphasises that a right to associate is meaningless, if there is no union recognition for the purpose of collective bargaining in place. *Freedom of association* is aimed at protecting the social purpose of trade unions, which is to achieve some level of bargaining power between the industrial relations actors (von Prondzynski, 1987, p. 225). Therefore, the aim of this constitutional right itself, its core intention, is to serve as a support mechanism in relation to the balance of power between unions and employers and their representatives. It must be supported and interpreted sufficiently to make this ultimate aim achievable. The state should take into

account that all government powers are based on the will of the people (Doolan, 2011, p. 8), wherein economic interests are only one aspect of the public interest, and act correspondingly. This includes the recognition of unions in pursuit of their original purpose, to bargain in light of a social purpose.

This research concludes that union recognition for the purpose of collective bargaining is a mandatory component of the constitutional *freedom of association* of Article 40.6.1(iii)° of the Irish Constitution.

However, union recognition is highly disputed in Ireland in relation to one major concern, namely the possible impact of its official acknowledgement on FDI, on which Ireland is highly dependent. Therefore, this issue will be dealt with below.

3. Company Access and Protection against Discrimination

The right of unions to access a company site, which potentially arises under Article 40.6.1(iii)° of the Irish Constitution, and protection against discrimination, will be examined in what follows.

3.1 Company Access

With regard to trade unions' access to company premises and their opportunities to recruit new members, trade unionists emphasise that it is problematic that most premises are not public areas and that most employers are unwilling to grant trade unions access. As Trade Unionist 1 states:

> *So, you cannot walk into a factory and say: 'Listen, I want to go in and meet these workers to talk with them about joining the union.' (...). It is private property (...). Normally what you do is that you get the contact of some people in a particular employment and we will organise meetings outside after the employment in a hotel. The strategic organising department will meet workers in their homes; they will actually go and meet them at night.*

He/she states that it would be much easier to enter the company site and meet workers in the canteen and talk to them instead of explaining to them in a hotel, for example, what a union is and try to motivate them to join.

Trade Unionist 4 envisages a trade union right to reasonable access to facilities in the company to enable workers to take part in trade union activity. In this way, unions could also recruit people who had recently started working at the company and ask them

personally whether they would be interested in joining. He/she also says that workers also need a reasonable amount of time off to engage in trade union activity.

State Representative 1, a highly recognised legal expert, says that there is no constitutional issue with regard to unions having the right to have access to company sites, but that a *'significant body of statute law'* would be needed to obtain access and other rights. As a positive example of statute law, he/she cites the health and safety law under which employers are now obliged to provide employees with certain kinds of information. As he/she further states:

> *I could not imagine what constitutional impediment that would be in a law that obliges an employer to provide workers with information on trade unions. Or to allow trade unions an opportunity to convince employees that they should join. And to prohibit employers from interfering in the process of communication. And I think these are all steps that would have to be taken, almost as a preliminary to requiring collective bargaining because collective bargaining follows on from trade union organisation. You have to have the members before you can bargain on their behalf. So that is something that will have to be considered.*

Trade Unionist 3 points out the issue of employers' property rights. He/she stresses that the rights of unions must always be balanced against employers' property rights under the Irish Constitution.

As union access is also seen in correlation with union recognition, Academic Expert 2 points out that one of the reasons why union recognition is important is that it grants access:

> *So, one advantage of union recognition would be that access must be guaranteed to the trade union. But also think about the free riders, the people who are covered by the Sectoral Employment Order, but they are not in the trade union. They might very well want to join a trade union and be represented by the trade union. And if they have union recognition, that legal right to recognition, then they can do it. They would be more encouraged to do it. If they do not have that, they may never become union members, because the employers' displeasure will be made known to them.*

He/she states that union recognition would make the recruitment of new members easier for support and help resolve the issue of free riders and thereby *'massive coverage of people by collective bargaining, but a minimal coverage by trade union recognition and trade union organisation'.*

3.2 Protection from Discrimination

The Irish Unfair Dismissals Act 1977–2015 legally protect workers with regard to trade union involvement. It states in section 6(2)(a) that it constitutes unfair dismissal if the employee is dismissed for being a member of a union or engaging in trade union activities. However, the Unfair Dismissals Act does 'not define what constitutes trade union activities' (Arthur Cox, 2019).

The EU Minimum Wage Directive (Article 4.1 (c)) determines as part of the promotion of collective bargaining that union representatives and officials should be protected from acts of discrimination by the employer:

> With the aim of increasing collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall: (…) take measures, as appropriate, to protect the exercise of the right to collective bargaining on wage-setting and to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting…

Also, international norms target the issue. As stated by the ILO in the *Right to Organize and Collective Bargaining Convention, 1949 (No. 98)* workers should be protected against union- and employment-related discrimination:

> **Article 1**
>
> 1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
>
> 2. Such protection shall apply more particularly in respect of acts calculated to--
>
> (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
>
> (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.
>
> **Article 2**
>
> 1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.
>
> 2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers'

organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

However, Trade Unionist 5 states concerning the treatment of shop stewards:

> *There is a bit of union busting that goes on in Ireland. It goes on under the radar. Why? Because there is no law against it. And why? Because when ultimately the union steps in to try and protect the worker who has been sacked, the employer insists on a non-disclosure agreement, so the worker might get compensation. We have to protect that individual. It does not go to the Labor Court. It does not go to the WRC. It is dealt with informally. So, yes, we need a suite of legislation, primary legislation that gives workplace representatives, shop stewards, legal rights to do their job. That is essential.*

He/she states that the workplace representative is the union person who is the key link between head office, union officials and the workers and adds*: 'If they do not have legal rights through the directive and we cannot protect them, they are not going to come forward in those non-union firms.'* The workplace representatives are not *'going to raise their head above the power but to get it taken off at the neck'*. He/she stresses the importance of protecting these individuals and claims that it is already clearly stated in the Directive that EU Member States have to take care of this protection. The Directive does give the Irish industrial relations actors a legal foundation to look at the issue and constitutes an obligation for the government to ensure sufficient protection.

Other trade unionists have similar experiences and demand protection for workers, unionists and shop stewards. As Trade Unionist 4 points out:

> *People who are engaged, who try to organise a union in their workplace, they are discriminated [against] in their workplace, they are victimised. It is things that fall short of being actually fired. So, life is made very, very difficult for them. There is no protection. If they are dismissed, they are entitled to a certain, a modest amount of protection, of compensation, or what often happens is that the employer will decide, yes, I will fire this person, and I will take the hit. And this is the easiest, and sometimes they force the worker then to sign a nondisclosure agreement, so it does not really get into the public domain.*

As he/she states, a lot of employers would find it worth paying the cost to fire somebody, to get rid of this certain person if thereby they can avoid other workers joining the union:

> *That sends out a message down to all the others. Okay, you can join the union, but we are not going to talk to you. And I think the big one is ensuring that workers*

> *can access trade unions, if they wish. We do not want to force people to join a trade union. But if workers want to engage with a trade union there should be legal protection for them.*

For this reason, the employees' side would look for increased legislative protection for workers in a company, who want to be in a union and that also shop stewards as the '*persons on the ground'* are officially entitled to protection.

Trade Unionist 6 also emphasises that there are a lot of areas in which trade unionists are not protected. Unfair dismissal legislation is in place. However:

> *If you are dismissed because of trade union activity, you can argue that you were discriminated against by virtue of being a trade union activist. But you have lost your job. We think the remedy comes too late. The remedies should be in place before the dismissal, not at the dismissal.*

He/she demands more protection for shop stewards than there currently exists.

> *There has to be legislation that protects me in doing my role, supports me during my role, allows me to get educated in respect of my role, allows me time to do my role.*

As a good example of that he/she cites health and safety legislation that provides statutory powers to health and safety representatives. As Trade Unionist 6 stresses, shop stewards and union activists should have the same level of protection.

3.3 Evaluation of Access and Protection

The right of access to the company and protection from discrimination are two issues with high relevance in union activity and their ability to strengthen their capacities.

Concerning **company access**, as things stand unions must recruit members in a 'sphere of illegality' which makes it difficult for them to counteract factors that impact the balance of power in Irish industrial relations and counteract diminishing union density. As Flood et al. (1996, p. 428-429) state, union presence has a strong influence on union orientation and participation of workers. It is therefore essential for their power. Denying unions company access evidences the existence of a certain culture that, it might be said, grew up alongside the original common law approach of seeing union activity as illegal. However, this view must be critically questioned in the general interest of upholding voluntarism in Irish industrial relations, which is based on a balance of power between the actors. Company access is one of the most important means whereby unions may effectively increase their power in practice. In light of international requirements and the abovementioned Supreme Court judgment, company access can be seen as essential for

unions to realise their purpose, which is collective bargaining by collectively organising. Organising people for a common purpose can hardly take place without company access. Company access therefore can be seen as an extension of the constitutional right to *freedom of association*.

In this context, employers commonly raise the issue of property rights as an obstacle to company access. Articles 43.1. and 40.3.2° of the Irish Constitution protect private property. Both *freedom of association* and protection of property rights are constitutionally guaranteed. According to Article 43.2., property rights must be regulated taking account of the societal aims of social justice and the common good:

> 1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.
>
> 2° The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good.

Constitutional rights must be harmoniously balanced. In this context, according to Hogan and Whyte (2003, p. 1970), legal restrictions on property rights have often been found valid and it rarely happens that such restrictions are unconstitutional. According to D'Art (2020, p. 104), hinting at the potential connection between unions and the aims of social justice, the common good and democracy: 'Arguably, it is more likely that such recognition would fall within the shelter of the constitutional qualifications of property rights.' As unions fulfil a highly important social purpose, it is unlikely that their constitutional right of *freedom of association* and the related right to company access might be impacted or even restricted by private property rights, in particular if the latter restrict the constitutional rights arising under Article 40.6.1(iii)° of the Irish Constitution conversely to the extent that they would thus be rendered an 'empty shell' (D'Art (2020); Casey (1972)).

Moreover, and likewise, **protection from employer discrimination** for union-related activities appears to be insufficient to exercise the constitutionally guaranteed right to associate. If workers and activists fear penalties that strongly impact their lives such rights cannot be exercised freely. In this case, the constitutionally guaranteed *freedom of association* would be restricted without legal justification.

The right of company access, as well as the right to be protected from employer discrimination can be seen as legally accessory to the constitutional right of *freedom of association.*

4. Is There a Need for Constitutional Change?

Some interview participants state that if the Irish Constitution is intended to provide for union recognition, a constitutional change and therefore a referendum is needed. The Irish Constitution 'can only be amended if the proposed amendment has been approved by the people of Ireland in a referendum' (Citizens Information, 2025).

There are different views on the question of whether there is a need for a constitutional change to provide for union recognition.

4.1 Opinions in Favour of a Need for a Constitutional Change

On one hand, interview participants see a need for a referendum.

Trade Unionist 1 sees the need for a constitutional change and says that carrying out a referendum is always difficult as one could never be sure to win it, in particular, as many conservative, right-wing and anti-trade union groups would argue strongly against it. Instead, he/she would *'put legislation in and make it work'.* Trade Unionist 1 also acknowledges that there are other *'purists'* views that would favour a referendum.

Employer representatives make their argument based on the concept of voluntarism. As Employer Representative 3 puts it:

> *At the end of the day, there is that voluntary nature, which is there and must remain unless, of course, you have to change the constitution. But you cannot have a situation where any legislation is in conflict with the Constitution. So, how we understand voluntarism as coming from the Constitution, which is what takes precedence and the right of employers not to engage with the unions.*

As he/she states, the voluntary system in place cannot be changed without a referendum and thereby a change to the Constitution itself. He/she adds that the government could not legislate for something that is in breach of the Constitution and hence union recognition and collective bargaining must remain voluntary for employers.

Academic Expert 3 does not see the advantages of a constitutional referendum but acknowledges the risk of conducting it. He/she expects that multinational employers would campaign strongly against it and even employers who engage with unions would

probably have to campaign against it. This would cause a quite adversarial and ideological situation. Academic Expert 3 sums up:

> *I think that the state should be stronger in making the actors engage. And lots of ways were discussed in which that can happen. But at the end of the day, I would not personally support any constitutional move, or legislative right to union recognition or legislative right to collective bargaining or anything like that. And I would support some change to make access better.*

Academic Expert 4 also sees the risk that various workforce groups would vote in a referendum who might not be interested in statutory union recognition.

4.2 Opinions Against a Need for a Constitutional Change

Academic Expert 2 finds that a referendum is not needed at all: union recognition already exists in the Constitution so there is no need to change it. He/she also points out the risk of such a referendum:

> *Also, forget about the referendum because it is a folly. Sometimes, referendums can fail. You can be defeated. You could be looking for reference that union recognition is legal and it is a constitutional right. What happens if you fail? Then you are in trouble. It is a high-risk strategy. It is both a stupid strategy and a high-risk stupid strategy. Because it is pathless. There is absolutely no need for it. There is no difficulty, no constitutional difficulty at all around the question of recognition.*

4.3 Evaluation of the Need for a Constitutional Change

There are different views on the necessity of a constitutional change. However, interview participants generally agree that it would be risky to conduct a referendum in terms of outcome and impact on the atmosphere between the industrial relation actors. It appears that a referendum on union recognition is either not necessary or not a good approach, even in case that one takes the view that union recognition is not an element of the constitutionally guaranteed freedom of association. However, this research finds that the right to union recognition is already contained in Article 40.6.1(iii)° of the Irish Constitution. Therefore, there is no need for a constitutional referendum.

5. Alternatives to Union Recognition?

Interview participants raised different issues concerning alternatives or possible compensation for union recognition that are worth discussing.

First, the issue of 'practice versus theory' is raised with regard to the relationship between union recognition and actual collective bargaining.

5.1 Collective Bargaining – 'Practice vs Theory'

According to Trade Unionist 2:

> *I think that the problem with this whole area is that sometimes it gets debated in emotional terms that do not really relate to the reality of this. So mandatory union recognition, even if that was achievable, does not mean that the employer has to negotiate or bargain with you. And what we have to try and get to, it seems to me is a situation where there is a commitment on the part of employers to negotiate collectively with the workers and for those workers to be represented (...). Simply saying 'we are going to have mandatory trade union recognition legislation' does not change anything. That is a demand that is a bit illusory.*

Trade Unionist 1 states that one might have a constitutional change or constitutional union recognition, but still not have collective bargaining.

Trade Unionist 5 sums up what from his/her point of view unions ultimately want from the state. It is not necessarily mandatory trade union recognition, but a level playing field on which the state becomes a participative actor to encourage companies to bargain collectively. The latter should become the norm rather than the exception. Also, the business interest should be to engage in collective bargaining. The state should create a context for that.

According to State Representative 3, in theory the right to union recognition makes sense, but it is obsolete if it cannot be articulated in practice. As he/she states, if the *'trade union movement cannot articulate that value (...) then why would you force recognition?'*

State Representative 2 emphasises that in former times union recognition was enforced by strike action.

> *In the early days of my involvement in this arena, if workers wanted the employer to recognise them for bargaining, their trade union bargaining purposes, they asked the employer. The employer said no. And they said: 'Well, if you do not recognise us, will be on strike next Monday.' And then many employers would have said: 'Oh, well, okay, it is better to recognise the union than not be able to make any chocolate or whatever it is that they make. And that is the old-time religion of industrial relations. I do not see an appetite among workers for going on like that.*

He/she says that is a big challenge for unions, as they cannot secure recognition in practice if members do not engage in industrial action.

Concerning constitutional union recognition, State Representative 2 explains:

> *And in practical terms, I am always concerned with what does it all mean in the end? So, in the end, will more workers be recognised by employers? In the end, will their terms and conditions of employment be better, will the employer be making more money, so that they can sustain better terms and conditions of employment for the workers, or will they all be spending a lot of time sitting around tables, arguably, and not making any more money that could be shared with workers? I do not know.*

Also, Academic Expert 3 emphasises:

> *And my view is always more practical and pragmatic. If you can find ways to encourage the parties to get to engage, then you know that without the Constitution or legislation, then that is the idea.*

Academic Expert 1 claims that *'you can have as many laws as you like, if the employer does not engage in collective bargaining'.*

However, Academic Expert 2 raises the question, how one can possibly have collective bargaining but no recognition. He/she as an actual circumstance and points out that according to the ILO, collective bargaining cannot begin until the union is recognised for that purpose. He/she refers to the public sector as a role model where *'the battle has been won'* as there is no difficulty about union recognition. As Academic Expert 2 states, this is also how industries need to be run. One should recognise unions and negotiate with them. That would be voluntarism. He/she refers to the nineteenth century and that unions went on strike to get recognition. However, he/she does not see practical recognition as being independent from constitutional union recognition. He/she further emphasises:

> *It is illegitimate to resist recognition. Now, of course, it is not going to be a complete solution. When you legislate for something like recognition, and the employer recognises the union, it does not mean that all is going to be well. There will still be a struggle and working out between the two parties the terms of their relationship. But that will be over time.*

Therefore, as Academic Expert 2 puts it, unions must adopt a dual strategy of strengthening the SEOs and increasing collective bargaining coverage according to the EU Minimum Wage Directive on one hand and driving constitutional union recognition on the other.

5.2 Direct Engagement Models

Direct engagement models are also an issue raised by interview participants as existing at least alongside constitutional union recognition, if not compensating for it to a certain degree. As Employer Representative 2 states:

> *We have a long history of direct engagement, because we have a long history of both partnership agreements, but actually specifically multinational investment in Ireland… we actually have a very well developed and very professional direct engagement HR model that operates here. And so therefore, it sits alongside the trade union recognition model.*

As State Representative 2 puts it with regard to having constitutional union recognition:

> *I am not sure that I can see that it is really going to be a huge advantage for workers or employers versus where they are right now. There is, in the bigger enterprises, let us say the more professionalised enterprises and larger employments, quite often there are other forms of employee voice and other forms of collective bargaining taking place with internal structures. More or less, some of them are saying there is collective bargaining taking place and there is not. But there is something happening there anyway.*

5.3 The EU Minimum Wage Directive

Trade unionists raise the issue of the relationship between constitutional union recognition and the EU Minimum Wage Directive. As Trade Unionist 4 states:

> *The Directive does not talk about union recognition. But what it does talk about is promoting collective bargaining, which I think is a broader and probably more useful concept, that does not mandate agreement.*

Also, Trade Unionist 5 sees the question of constitutional union recognition in context with the EU Minimum Wage Directive. As he/she says:

> *If you said to me, if we were going to rewrite the Constitution, would I like it in there? I would say, yes. Do I want to invest all our time in campaigning for that? No, because I think we have got the Adequate Minimum Wages Directive, which is a game changer, which moves the situation on, and if the state embraced it, it would radically transform the situation. Would it give you a constitutional right to collective bargaining or mandatory trade union recognition? No, it does not. The directive is not about that.*

5.4 Statutory Rights

Furthermore, interview participants raised the issue of statutory rights in the context of the discussion on union recognition. As already mentioned, State Representative 1, a

highly respected expert, finds it unnecessary to discuss a constitutional change to implement union recognition. Instead, he/she prefers implementation of statute law on the basis of the Constitution but not to think about changing the Constitution itself. Could statutory rights be an alternative to the acceptance of constitutional trade union recognition?

Academic Expert 4 claims that *'the Irish government could go ahead and could implement statutory recognition without constitutional reference'.* He/she claims that the Irish government could actually introduce a statute to implement statutory recognition without any danger of it being found to be unconstitutional. Though, Academic Expert 4 highlights that there is a lot of legal uncertainty around the issue of statutory union recognition '*but also even around the measures we suggest that are stopping short of statutory union recognition'.*

However, State Representative 2 states:

> *Every statutory attempt to date to address this issue of workers who want to be recognised, they are trying to be recognised by their employer, every statutory effort has really been pretty well a failure. It has not changed the landscape. It has managed to calm the waters for a while, but generally runs into a wall of some kind, and it just does not work.*

He/she is uncertain about the level of conflict but also the benefits that would emerge from a statutory requirement to recognise trade unions. Also, as State Representative 2 states, there have already been several statutory initiatives to try and address the question of recognition, including the Industrial Relation Acts.

5.5 Discussion of Potential Alternatives to Union Recognition

It can be concluded that the potential alternatives to union recognition raised cannot be regarded as such but rather stand alongside recognition or are based on it.

Some interview participants emphasise that in their view the **practice** and success of actual collective bargaining is more important to them than the legal theory. However, they do not exclude each other but stand alongside one another. For the purpose of collective bargaining, an employer must in fact recognise a union. Hence both interact and are based on each other. Therefore, they are not alternatives but part of the same cycle. The same applies to the **EU Minimum Wage Directive**, which promotes and allows for collective bargaining. **Statutory attempts** to realise constitutional guaranteed rights have not been successful so far in addressing the issue of union recognition. They

also stand alongside the constitutional issue and could possibly take on a declaratory character in order to express the rights already contained in the Constitution However, there is always the risk that they do not successfully pass the legislative process.

Concerning **direct engagement models** and professional HR management, Lavelle et al. (2010, p. 411) state that increasing non-union representative structures constitute a potentially important development in Irish employment relations. The authors differentiate between direct articulation of workers' views in their immediate work environment and indirect articulation via representative bodies such as trade unions or works councils (Lavelle et al., 2010, p. 396). This study takes the view that these two types of interest articulation do not exclude each other but can stand side by side and create a 'fruitful symbiosis'. Depending on the company culture, they can exist and evolve alongside one another, and direct engagement models do not necessarily 'individualise[s] the employment relationship and so weaken[s] the collective', as claimed by D'Art and Turner (2011, p. 40). However, direct engagement models are not related to constitutionally guaranteed rights arising from Article 40.6.1(iii)° of the Irish Constitution and the exercise of these rights. They do not target the realisation of individual constitutional rights in the form of collectivisation arising from *freedom of association*. Therefore, they can be an addition to but not a substitute for collective interest articulation under Article 40.6.1(iii)° of the Irish Constitution and do not diminish the need for union recognition for the purpose of collective bargaining.

6. Fears and Potential Obstacles

When it comes to constitutional union recognition, interview participants expressed certain fears and doubts that refer in particular to experiences in the UK and the US in terms of union recognition and union busting, as well as to the fear of a negative impact on FDI in Ireland.

6.1 Bad Experiences in the United Kingdom and the United States

According to Trade Unionist 4, in the UK and the US, legislation that requires employers to recognise unions exists, but it is *'quite difficult to do so'.*

Trade Unionist 5 states:

> *The directive does not bring in what is called mandatory trade union recognition like you have in Britain or in the United States. And quite frankly, we are not*

looking for that, because where you have that, all it does is that it does encourage employers to be more focused on union busting.

Trade Unionist 2 emphasises that *'in countries that have mandatory trade union recognition, it does not necessarily mean that they have any greater outcomes to collective bargaining'.* Employers still refuse to negotiate.

According to Academic Expert 3 with regard to constitutional union recognition:

> *They have it in the UK, which means they have it in Northern Ireland. Does it work? No, it does not. It does not work because – and this goes back to the whole point about our system and the law – because it becomes a massive legal battle over everything.*

6.2 Constitutional Union Recognition – A Threat to Foreign Direct Investment?

Concerning whether constitutional union recognition would be a threat to FDI, the opinions of the interview participants differ.

On one hand, Academic Expert 4 states that *'some of the parties that are players in this area will say this is going to be disastrous for multinational employment and for jobs'.*

Trade Unionist 3 thinks there would be concerns about investment in Ireland, which needs investment very badly. As he/she states:

> *I have had involvement with a limited amount of multinationals where they will have recognition in this jurisdiction and in other jurisdictions, but I know there are some multinationals who do not recognise unions here. But because the law requires them to in other jurisdictions. So, there is a variety of ways it is viewed. Some will because they recognise unions in other jurisdictions. Some will not if the law does not require them to.*

However, in light of the EU Minimum Wage Directive and its provisions, he/she adds that *'the directive is going to be applicable across the rest of Europe. Are there companies here that would move elsewhere outside of Europe – I do not know.'*

Trade Unionist 3 points out that the industrial relation actors are well aware of the voluntarist system in place, when reflecting on this issue:

> *They are conscious that we have a voluntarist system for a number of different reasons, mainly the Constitution. But I do not think anybody is going to engage in any laws and not have foreign investment in mind. Because if you are going to have recognition, but no employers here to have recognition with them it will not be very useful.*

Employer Representative 2 states that an increase in union strength does not necessarily constitute a threat to FDI. He/she argues:

> *Not if it increases voluntarily. So, if the union movement can convince employers of the benefits of engaging in trade union negotiations, and to convince the business community that actually they are open and accepting of the fact that the world changes very rapidly, that change is a constant, and (…) if they could convince that they are a proactive partner, I do not see that further unionisation would actually be seen as a bad thing. I think compulsory requirement to negotiate without the union culture changing substantially would be very unwelcome and would be real negative for longer term investment decisions being made here, yeah.*

On the other hand, Academic Expert 2 takes a totally different view:

> *There is also the argument often made that if you had recognition, the multinational would leave, they would not come anymore and you would be doomed. I do not think that is the case. Because is that the only reason multinationals come here? Because there is no statutory recognition? I doubt it. There are lots of other much more pressing reasons why they come there. All the benefits they get from the states' taxation system, the educated workforce, the very sort of benign state from their point of view.*

Academic Expert 4 points out that multinationals often do not recognise unions in their home countries, particularly in the United States. Hence, when they come to Europe, they are often pragmatic and do recognise unions as they do in Germany or Scandinavia. As he/she concludes:

> *I think they would adapt to that in Ireland as well. I would not see capital flight, I would not see Google or LinkedIn suddenly depart from Dublin. Nor would I see major capital projects that they might engage in, in the future being drastically affected by the decision. So, would it massively impair Ireland? No, I do not think so.*

Academic Expert 4 agrees and calls the belief that multinationals would leave Ireland in case of union recognition the *'general view of employers'* and probably the state development parties, in particular Ireland's Foreign Direct Investment Agency (IDA), the key player in this area. As he/she claims:

> *I think some employers would recoil from that. Would they move out of Ireland? Would they curtail further investment in Ireland if statutory union recognition came in? I very much doubt it. Would it make Ireland less sellable to the IDA as a destination for foreign direct investment? It may well do, because they can say if you come to Ireland, you can operate on a non-union basis, you can recognise the union, you can do whatever you like, you are not going to be obliged by the law to do anything. And that is the kind of competitive asset for the IDA, which they would no longer be able to use. So, it might well impinge their ability to shop for foreign direct investment.*

6.3 Evaluation of Fears and Potential Obstacles

Two main obstacles were raised against constitutional trade union recognition.

Interviewees do not favour a system and development similar to that in the **US and UK** in terms of union recognition. As D'Art (2020, p. 85) explains: 'In the US, Canada and the UK, statutory recognition involves the State legislating so as to enable a majority in a group, grade or category of workers who opt for union membership to give concrete expression to that democratic decision by obliging the employer to recognise and negotiate with the employees' union.' In the UK and the US, mandating union recognition might have caused a rise in union busting and changed the industrial relations culture in a negative way, as the interviewees stated. However, such developments depend strongly on the historical context, certain actors and various other circumstances, including the general economic situation and the political or societal context. It is stressed that even with union recognition employers may refuse to bargain collectively with unions and hence, the ultimate goal is not reached. It appears that constitutional union recognition alone would not be the solution to rebalancing power in the labour market. Other factors must be included. This will be dealt with in the next part of this chapter.

Concerning **FDI**, interviewees took different views of whether constitutional union recognition would have a negative impact on it, which is difficult to predict. However, the assumption that it would necessarily be negative should at least be questioned. According to Gunnigle et al. (2013, p. 215): 'Ireland's position as one of the world's most globalised economies is the upshot of a long-standing public policy stance prioritising the attraction and retention of FDI through a combination of incentives, particularly low corporation tax and liberalised trade policies'. As the authors claim, FDI has played a key role in the success of the Irish economy. Indeed, FDI was 255% of GDP at the end of 2023 which is about four times the EU average (Central Statistics Office, 2025). Lavelle et al. (2010, pp. 397–398) emphasise that FDI is highly important for Ireland, hence 'MNCs exert considerable influence on issues of public policy, including the domain of employee voice' and they have opposed state legal intervention favouring employee representative bodies. However, D'Art (2020, p. 109) emphasises that owing 'to a dearth of survey evidence, it is difficult to establish with any certainty the extent to which statutory recognition might act as a deterrent to multinationals contemplating investment in this jurisdiction'. Though, the author states that many multinational firms in Ireland do actually have union recognition in their home countries. Although employers generally

prefer to have no union involvement, union recognition does not necessarily mean the loss of FDI but rather is a minor concern for employers. As the author emphasises, there is no evidence of a negative impact of union recognition on FDI. On the contrary, multinational companies tend to locate in Ireland on account of the tax regime, highly skilled workforce and supportive government policy.

Indeed, Ireland has a lot to offer to foreign investors and this should not be underrated. On the IDA website (IDA, 2025) union recognition or the advantages of the voluntarist industrial relations model for employers are not made one of the major issues in relation to the question 'Why Ireland?' Instead, it highlights diverse other aspects that constitute the attractiveness of Ireland and its economy for inward investment, such as the flexible and resilient infrastructure, the talented and highly educated workforce, the quality of life and the Irish economy as an enduring location for investment. IDA emphasises that Ireland is an 'exporting powerhouse', a committed EU member and FDI base, with robust economic strength – even during the COVID-19 crisis – and a pro-business environment. The latter is described as follows:

> Ireland consistently ranks among the top countries in the world in which to do business, supporting FDI growth. Successive governments have maintained this pro-business outlook: we favour green lights over red tape. (IDA, 2025)

Ireland thus takes a very positive, accommodating approach to FDI and stresses its pro-business mentality. However, being pro-business does not necessarily mean being against trade unions as other successful big European economies show.

IDA stated on its website in December 2024 that in Ireland there is strong capital investment and a high number of new investors, resulting in continuing strong FDI performance, also in the face of intense global competition. According to IDA, Ireland's transformative FDI base is resilient, stable and accounts for around 11 per cent of national employment. Ireland remains attractive to international investors who look for high-value skills and innovation. Therefore, IDA foresees continuing growth and investment in the Irish economy, as well as a solid employment base. It therefore puts a strategic focus on developing talent and skills, sustainability and innovation.

IDA Ireland's CEO, Michael Lohan, said when talking to SiliconRepublic.com:

> Talent is the number one thing that companies look for because without people and without the right talent, it doesn't matter what your product or service is, you're not going to deliver it.

As Darmody states on SiliconRepublic (2025), IDA's new strategy focusses on upskilling talents in key growth sectors and developing skills that will be needed in the future. It is a question of experience and mindset whether unions are able to help reach these future goals better or faster. In any case, union avoidance does not appear as a core part of IDA's future strategy, nor is it presented as one of the main advantages and attractive attributes for investing in Ireland. The country profits from other advantages like its international, English speaking and well-skilled workforce.

A definite final answer cannot be given to the question of a possible negative impact of constitutional union recognition on FDI. However, Ireland can and should be proud of all the attractive features it has to offer to foreign investors. It can be observed that also other European countries are, despite having union recognition and strong employer–employee relations, still attractive with regard to FDI as long as they offer a range of features. There are plenty of instances in which firms and countries benefit from strong employee–employer relations, where the relationship is good and trustful. This can be seen in Germany, where strong unions and works councils have contributed to the success of the German economy after the Second World War. German unions have sought to strengthen the German middle class, which is seen as the 'backbone' of the German economy (BDI, 2025).

Furthermore, the Irish debate on FDI should not be overemphasised where there is no need, potentially causing unnecessary fear and prejudice. Instead, further research should be conducted on the impact of union recognition on FDI to bring the discussion 'down to earth'.

7. Conclusion

There are different opinions on whether the Irish Constitution contains a right to union recognition for the purpose of collective bargaining or not. However, interpreting Article 40.6.1(iii)° of the Irish Constitution in light of international and European standards and norms and the jurisprudence of national and European courts suggests that such a constitutional right does exist under *freedom of association*.

Also, access to the company side must be granted under Article 40.6.1(iii)° of the Irish Constitution and employers' property rights do not hinder this.

Workers and shop stewards are not sufficiently protected by law from being discriminated against for union-related activity and this must be improved.

There is no need for a constitutional referendum as the right to union recognition for the purpose of collective bargaining is already granted by Article 40.6.1(iii)° of the Irish Constitution. Apart from this, a constitutional referendum is neither recommended nor desirable and could have unforeseeable counter-effects.

Constitutional recognition of trade unions cannot simply be replaced by other approaches, such as collective bargaining, direct involvement models or statutory rights. They exist side by side and can form a fruitful system.

There are certain fears and potential obstacles. They include increased union busting and other negative effects for unions when employers are legally compelled to recognise trade unions, as in the UK or the US. Fears of a threat to FDI were found among interview participants but it is not necessarily perceived as a realistic fear, in particular, if unions can convince employers that they can benefit from engaging with them. After all, Ireland has a wide range of features that are attractive to foreign investors and should continue to emphasise them in public and internal discussions, while not overemphasising the uncertainties surrounding union recognition.

PART 5: THE ROLE OF TRUST IN IRISH INDUSTRIAL RELATIONS

1. Introduction

This section will outline the data on the issue of trust and attempt to answer the question of what role trust plays in Irish industrial relations. It will deal with the significance of trust in industrial relations (2) and outline answers to the question of whether the relations between the Irish industrial relations actors are trustful (3). It will also seek answers to the question of how trust could be increased (4) and outline a conclusion.

2. The Significance of Trust in Industrial Relations

How did interviewees evaluate the role of trust in Irish industrial relations?

Employer Representative 1 stated that trust is essential:

> *I think trust is an essential component, even though you are coming from a different perspective. We would represent the employers; the trade unions represent the workers. And I think there has to be trust between individuals.*

He/she states that in his/her sector, the employers generally have good working relationships with the unions and the ICTU. Concerning trust, Employer Representative 1 further claims:

> *It is essential and that is built up over time. So that is kind of experience, you get to know one another. There has to be trust, and there has to be respect, and there has to be an ability to see the others' point of view. They are essential in industrial relations terms. When you are engaging in collective bargaining, you have to understand where the other side is coming from, and you have to have that element of trust, absolutely.*

Employer Representative 1 concludes that, if there is no trust, a relationship may become very difficult:

> *It is kind of a win/lose. And that is not really the way things work.*

State Representative 2 points out that industrial relations and *effective* industrial relations in particular are entirely built on trust and mutual respect at various different levels, though he/she recognises that it will not ultimately happen that all workers would respect all employers and all employers will respect all workers.

He/she puts thoughts on the role of the state and the law in Irish voluntarism in the context of thoughts on trust:

> *The state has no role in enforcing an agreement or pretending that it is a matter of law or it is legally binding. It is not legally binding. And therefore, the idea of honour and reliability and truthfulness, these things are very important, particularly at the professional level, in a voluntary industrial relations collective bargaining system that is fundamentally not engaged with the state.*

Academic Expert 3 agrees with the proposition that trust reduces complexity in industrial relations:

> *In all areas trust reduces complexity. The more legalistic things get, the less trust you have. And you could get very sociological and say, this is the trajectory of modern society. When we all lived in communities, there was no need to have contracts and so on, because everybody knew each other. And now, in a very complex society, you need legally binding documents and contracts and edit it up. But in a workplace, the greater the level of trust, the less need there is to argue or bargain or reduce everything to a contractual relationship.*

If trust is breached that things could get more complex afterwards, because then you would have *'to write everything down and proceed to argue about it and all that'.*

As State Representative 2 states, collective bargaining cannot function without trust. The Labour Court and the Workplace Relations Commission do have a certain role in pointing out to the parties that if there is no trust in a particular employment and it does not exist, collective bargaining therefore is not effective. But finally, the issue of trust remains with the parties involved. He/she stresses:

> *If you do not have trust, you do not have anything. And you are only pretending that you are collectively bargaining because you are not, because nobody trusts you.*

State Representative 1 states:

> *An absence of trust really is fatal to the quality of the revenue in any walk of life, but particularly in industrial relations, so trust is huge. But it is very difficult to set rules or to prescribe it. You either have it, or you do not.*

3. Is the Relationship between the Irish Industrial Relations Actors a Trustful One?

3.1 Trust Between Unions and Employers

The role of trust in industrial relations is very important and fundamental. But is the current relationship between the industrial relations actors a trustful one?

Trade unionists generally do not see the relationship between employers and unions in current Irish industrial relations as being a trustful one.

Trade Unionist 3 states that if it was more trustful, union density figures would be higher than they were currently. He/she claims:

> *I believe there are some employers who are quite sceptical of unions just as an ideological dislike of trade unions and see the strength of workers coming together and collectivising around an issue. They see that there is power in that.*

Trade Unionist 2 points out that the infrastructure for trust is not really there:

> *I do not think we have the relationships and the infrastructure to that you could say, there is a high level of trust.*

He/she states that a lot of work needs to be done to build up trust. Good faith engagement or collective bargaining are not going to work until this is achieved.

Among employer representatives, opinions differ.

Employer Representative 1 asserts that he/she has a good working relationship with the unions involved. The unions themselves would also be *'out in the field'* talking to workers and dealing with individual issues, but there would also be national issues in terms of overall pay and conditions. As Employer Representative 1 states, trust is essential on both regards.

Employer Representative 2 states that there exists a really good framework for building confidence and trust between employers and unions, however, the parties might have different ways of getting there. As he/she states:

> *Actually, our overall ambition is the same, but that we can still work towards. I guess, moving the enterprise forward, the real concern for employers is that trade unions are resistant to change.*

He/she says that trust varies depending on the levels of engagement. On the level of ICTU and IBEC it is very positive with a strong working relationship. There are many different issues, but also the same aims in terms of social policy and industrial relations. However, the parties do not always have the same ideas on how to get there and how to achieve those common goals. Compromises are made to work towards finding a solution that suits both sides. However, Employer Representative 2 emphasises:

> *I think at enterprise level there is some distrust between employers and trade unions that they actually have those same ambitions. And I think that is a really important thing that needs to be built. I do not believe that employers feel at enterprise level that the trade unions are always working in partnership with them as opposed to working against them. So, there are pockets where that is a difficult relationship, and more so with some unions than the others.*

Among state representatives, State Representative 1 has encountered various environments in which there is a low level of trust. He/she explains:

> *And that can often come about because of certain hierarchical structures on the management side or sometimes an absence of leadership on the part of the trade union.*

Experts claim that trust varies and there is a spectrum.

As Academic Expert 1 states that while between some employers and unions there is trust, in a tremendously high number of constellations there is no trust.

Academic Expert 3 states that traditionally the relationship between the industrial relations actors has not been trustful, but, however, *'there is always a spectrum'*.

Academic Expert 4 answers the question whether relations are trustful:

> *It depends. (...). In some firms, there is a very high level of trust between unions and employers, where unions are recognised and other firms, there is a warfare between unions and employers.*

3.2 Trust in the Institutions

As State Representative 3 says:

> *I personally am a firm believer in that whole voluntarist approach in the institution, in the institutions of the state. And it really is a sort of a cyclical thing that trust has to be built up. And I think we are in a time where trust maybe has to be rebuilt between all the various parties as we move forward.*

As already stated, respect for the Labour Court and its recommendations is perceived as being high among interview participants, which indicates a high level of trust towards this institution.

4. How Can Trust Be Built Between the Irish Industrial Relations Actors?

The data indicates that the level of trust in the relationship between unions and employers and their representatives shows deficiencies. Hence, the question arises of how trust can be built.

4.1 General Approaches to Building Trust

Some state representatives emphasise when thinking about building trust that one has to take into account that trust is a very personal matter.

State Representative 3 stresses that the involvement of certain personalities in the industrial relations landscape is important. As an example, he/she names Kevin Foley, chairman of the Labour Court, and Patricia King from the union side and calls them really strong characters with really strong reputations, whose involvement currently shapes the industrial relations landscape of trust. He/she emphasises that trust is a very personal thing, hence trust is impacted by the existence and the actions of persons like them. For example, this becomes evident when people retire and therefore withdraw from the established trust system.

As State Representative 2 states:

> *In a trade union environment there are professional practitioners, and those people must be honourable, because if they are not, employers will not talk to them about how they might solve a problem. So, it is almost a self-perpetuating proposition. A human resources director or an industrial relations manager working for an employer, if they do not respect and understand the role of the trade union and if they do not behave in an honourable way, in other words, that they do the things they say they will do, and if they do not maintain professional confidences, well then there just will not be any voluntarist engagement by workers' representatives. In other words, people will not trust each other.*

He/she emphasises that particularly small employers need time to understand that if they talk to workers and are not truthful, they will afterwards be perceived as not being honourable. State Representative 2 explains the consequences:

> *Other people (...) learn that and they know that. They know you are not trustworthy, they know you are not honourable, and they know that there is no point in bargaining with you, because you will not be honourable, and you will not do what you said you would do, and you will not abide by the agreement reached.*

State Representative 2 stresses the individual and personal level of trust. He/she says that if people have trust issues, it is not possible to help them resolve those from outside. However, the practice of collective bargaining is so deeply embedded in the Irish economy that it built this understanding between people. Also, if a worker representative looks after the interests of the union members, they must be a trusted person.

He/she also emphasises the role of Irish culture in the context of building trust:

> *And I would often say that Irish people just cannot seem to stop talking. I mean, they just keep doing it in a way that is good for industrial relations. They just keep talking, and they will just keep telling each other stuff, sometimes too much, but nevertheless, it is just our context here, small economy, very deeply embedded*

> *networks of trust at the professional level, between people who engage in collective bargaining.*

State Representative 2 evaluates these circumstances as being highly important. He/she continues with regard to organisations like SIPTU:

> *Those people at the top of the organisation, they have access to everybody – everybody at the top of government, everybody at the top of the employers' organisations, probably every managing director and chief managers in companies all over the country who recognise trade unions. And they can pick up the phone to each other, they have the numbers in their phone, and they can have a conversation with somebody they trust in that company.*

He/she himself would have a lot of numbers of key actors in his/her phone that he/she could call quickly and informally and ask *'look, what is going on there? Why is it that I am hearing this or that? And I will be told an answer, and the person I am talking to will never tell anybody who spoke to me at all, and I never tell anybody that I had that conversation.*

Academic Expert 2 states that high trust arises when people believe in the objectives of the organisation. He stresses that, if they do, they are totally dedicated and committed to it.

Trade Unionist 4 highlights that trust could be built if employers were willing to engage with unions. He/she points out that in the past, there have been corresponding experiences with high profile companies, who originally constantly refused to engage with unions. Trade Unionist 4 refers to the case of Ryanair. There had been a public policy of not engaging with unions until the company realised they had to. As also Academic Expert 3 states *'prior to 2017, Ryanair was possibly one of the most anti-union companies there was'*, however*, 'in 2017 they started engaging in collective bargaining'.* Trade Unionist 4 says that he/she knows from persons involved in this development at Ryanair that at the early stages, there was a huge amount of mistrust and that Ryanair feared that the union would damage the company. He/she continues:

> *And it took them a while to realise that it is not the case. The union has issues that it wants to address on behalf of the people it represents. The unions' mission is not to damage the company, it is to make sure that the people it represents are treated fairly and paid fairly.*

Thus, Trade Unionist 4 emphasises the common goal of employers and unions and that their aims are not naturally contradictory. But would he/she say that Ryanair is now a union-friendly company with high levels of trust? He/she states that the company is not

as hostile as it was. Though both sides have different views, there is not the open hostility that had been there for many years. The employer realised that the information exchange with the union is useful to him. And that once matters are resolved, the union sticks to the agreement.

Trade Unionist 5 confirms that Ryanair did not change their business model. He/she states that it is still a low fares and no frills airline.

> *Unionisation has not changed. And now is the relationship perfect? No, but it is not like before unionisation of Ryanair.*

Employer Representative 2 emphasises that trust could be built based on union behaviour and attitudes. Employers at enterprise level would often feel that the union would work against them. He/she guesses that in the context of moving enterprises forward, *'the real concern about employment for employers is that trade unions are resistant to change'.* As he/she states:

> *We are technically a very small country in terms of global operations to find that there are more and more impediments to being able to move quickly. And I think what the business community does not have confidence in is the trade unions' ability to be able to adapt rapidly to change, and to actually see change as an ongoing requirement. And to see it as a positive rather than a negative. And we all know that individually. You know, we are all inclined to like the status quo.*

He/she points out the lack of trust of the business community in the trade union's ability and capacity to change as quickly as the world changes and for businesses to remain competitive. Employer Representative 2 stresses:

> *So, there is not any appetite really, for some businesses. That is not to say some businesses do not have very positive relationships where they are unionised and would not seek to change that. But I would say, to be honest, for those businesses who are not unionised, there is no appetite to engage in union negotiations. And it is largely around adaptability, and speed of change.*

With regard to union behaviour in the context of trust building, Employer Representative 2 also criticises the unions' legal and negotiation strategies:

> *And instead of moving to the Labor Court from that point, we find the union retrenches all the way back to the starting point of your negotiations, and you are trying to go forward from there, or the union will not allow the matter to go on to the Labour Court for a recommendation, but equally do not come to the table to negotiate. And the organisation is left trying to identify how they move forward, and ultimately stuck in a holding pattern of a negotiation that never has an end point.*

Reasonable time frames in place in the industrial relations system would help to build trust and confidence. As he/she states:

> *I think that is one really sensible mechanism that we can put on place. But it is up to the bodies, both the employer and the trade union to actually stick to that, and to operate it. And I think one of the key concerns that we would have is how under-resourced the unions appear to be at the moment.*

Employer Representative 2 thereby emphasises the importance of timely and efficient processes and the professional capacities of the actors as elements and options for building trust.

Employer Representative 1 emphasises the *'soft side'* of building trust, which is time and experience:

> *I think it is with experience. It is built up over time. It does not happen overnight. It is all about relationships. You build a relationship, and you put time into it from both sides' perspective. So that takes time, and that comes with experience, time and experience, where you get to know one another, and you build that trust. So, it is time, and it is experience.*

As a lack of trust could create a win–lose situation, she always says that *'if everyone is a little bit unhappy, that is a good result'*. Besides time and experience there is also the ability to see the other person's point of view. As she states, all kinds of relationships take time to develop and to get trust in place.

Employer Representative 1 stresses the importance of informal talks between the actors:

> *And you have to demonstrate trust, because you have to be able to talk formally and informally. I will have a lot of formal discussions, where I would have members with me, the trade union side would have shop stewards or workers with them. But outside of that, we have to be able to talk, and we have to be able to say :'Well, look, I will not be able to sell that, or I may be able to sell this, or, we really need this or whatever, so you can talk informally with one another and trust one another that it is an informal discussion towards coming to some sort of a conclusion, or towards coming to some sort of an agreement that all sides can live with.*

Besides the role of informal talks and soft compromise, Employer Representative 1 states that building trust is not a one-off happening, but a sustainable process:

> *Because you might be faced with a particular issue today that you are trying to resolve. You need to keep that trust there, and you need to keep that relationship there, because this issue today will be resolved at some point. There may be another issue next month or next year, and you need to have that relationship with the other representative, be it the trade union official, (...), because you would be*

faced with some other dispute or some other issue at some other stage in the future and you have to have that relationship there that you can talk to one another.

Employer Representative 3 stresses that trust could be built by considering the recommended codes of trust around the area of collective bargaining.

In the LEEF Report, the High Level Group recommended the development of a *Code of Practice* according to Section 20 of the Workplace Relations Act 2015 that constitutes a 'Best Practice' for firm-level collective bargaining. The *Code of Practice* suggest the following means to collectively bargain in a trustful and respectful manner:

- the principle of resolving disputes as close as possible to the workplace level
- the commitment of parties to move negotiations forward in a timely and efficient manner and avoid unreasonable delays
- provide relevant information
- negotiate with appropriate representatives

As Employer Representative 3 states, codes of practice do not have legal effect, but would be really useful for building trust at enterprise level.

4.2 Building Trust by Conflict and Cooperation

As Academic Expert 2 states, trust can also be built by conflict and cooperation, both being inherent in industrial relations. Concerning the role of conflict, he/she states:

> *Why is there conflict? Because when people meet in the labour market, they meet as buyers and sellers. We all know, there is a conflict of interest between buyers and sellers. It is as simple as that. Do employers want to raise wages? No. Now workers generally want higher wages. That is a conflict of interest. The more that goes to wages, the less that goes to profit, a conflict of interest. That is the motor force, you cannot get rid of it. You cannot wish it away. (...). It is a fundamental fact like gravity.*

Academic Expert 2 states that a market dominated by capitalist priorities and principles would be a nightmare for workers. Therefore, from the rise of industrial relations onwards, one had socialist parties and trade union movements. Unions, as he/she states, are a creation of the free market system. Hence conflict is inherent in industrial relations. Employers would like a trouble-free enterprise and to be able to issue instructions without them being questioned. Therefore, conflict would arise anyway and if not institutionalised, it would arise beneath the surface. Though, *'it is much better actually, for the employer to have the conflict institutionalised, out in the open. So, you could manage it and then you can come to a compromise. And agreements.'*

However, industrial relations are not only about conflict – they are also about cooperation. As Academic Expert 2 states, *'you have conflict, but you also have the tendency or the pressure to cooperate'*. He/she goes on to explain:

> *While I tend to emphasise conflict at work, arising out of the nature of the employment relationship, there is another aspect of the employment relationship: the cooperative aspect. People who have jobs want the job to continue. They do, of course. And so that necessarily means there is going to be some level of cooperation.*

Companies' Human Resource Departments would have to acknowledge the existence and legitimacy of both conflict and cooperation in the employment relationship. The two must be balanced. Certain circumstances can disrupt this balance, however:

> *A rise in the cost of living, then the balance is going to shift towards conflict. Or if the firm is in trouble and the workers are concerned and they want to avoid redundancy, it could shift towards cooperation.*

Therefore, when external factors change, one always has to find a new balance and find the necessary means. Academic Expert 2 questions whether voluntarism is strong enough for unions to regulate that.

4.3 Low and High Trust Surroundings

According to Academic Expert 2 there are low- and high-trust surroundings. The Industrial Revolution created low-trust surroundings, like Taylorism or mass production:

> *It depends on your position in the enterprise. If you are on the shop floor, and you are heavily supervised and you are allowed no discretion, right? That is a low trust situation.*

He/she states that union recognition is not a guarantee of high trust, but it is a start as one has a chance to negotiate and control one's own environment.

In high-trust environments workers have at least some control over their work. Workers who have high trust *'believe in the objects of the organisation completely. They are totally dedicated and committed to it. And they expect the organisation to be equally committed. And that is an ideal situation for high trust.'*

However, he/she acknowledges that it is difficult to create high-trust environments in companies in which the company makes a profit out of labour, but it is possible.

Academic expert 2 also believes that, in this case, legal regulations in the workplace cannot replace trust and therefore examines the relationship between the law and high levels of trust. As he/she puts it:

> *Once you have a law, for instance (…) you must have your contract in writing and you must have your wages outlined and the details, you must have that in writing. That used to be the case, it is now the case. So now you have the contract in writing, the law says you have to have a contract in writing. Has that created trust? No, because you see plenty of cases in the Labour Court where the employer has not given the people their required documents under the law. So, the law is not into high trust as such.*

4.4 Building Trust through Training

State Representative 1 states that trust could also be built by providing sufficient training to the industrial relations actors:

> *It is a question of policies and training. Because a lot of employment managers are focused on maximising the efficiency and the profitability of the area for which they are responsible. And they sometimes take the view, our old industrial relations is somebody else's problem, that is detached. And I think we see an operation going well, where every manager recognises that they are the manager of people.*

4.5 Building Trust by Forcing Employer Engagement

Academic Expert 3 states that in the longer term soft measures to make parties engage in the process of collective bargaining are preferable to measures forcing the parties to engage. However, initially it might be necessary to have some of the latter. He/she refers to the JLC system.

> *So, with the JLCs, for example, the recommendation is that the parties engage, it is attempted to do everything possible to make engagement as nice as possible for them. But if they do not engage, there is a hard, legally imposed outcome, which is why you get the order imposed anyway. And that is sometimes … you have to have that stick, you know, ironically, sometimes to increase trust, you have to get the parties in the room, but to get them into the room, you might need something nasty as a threat.*

Academic Expert 3 stresses that it is always about creating this balance of threat and participation. He/she goes on:

> *But you want the threat to be enough to say, well, I might as well go in the room, because if I do not, something will happen anyway. And that can happen legally, and it can also happen via policy.*

Academic Expert 4 believes that the idea in the LEEF Report to improve the JLC system through greater employer participation was actually intended as a confidence-building measure to strengthen trust and enable the JLCs to function in a way that is not only better for employees but also better for employers. He/she says:

> *These were certainly confidence building measures that were seen to try to engender trust and meaningful practice of dialogue on JLCs… It was not simply the hope that they would get going and continue, they would begin again and just do what they always did. Historically, the hope was that they would be reconstructed in a manner in which they would be able to work more proactively to foster sectors and skills in the sectors and improve competitiveness of the firms involved in the sector, and also the well-being pay and conditions of employees. And that in that sense, that was the intention.*

4.6 Building Trust by 'Good Faith Engagement'

Academic Expert 2 stresses that good faith has to grow out of experience:

> *Now the employer and the union come together. And good faith bargaining evolves out of the experience of the negotiations over years between the employer and the employees. That is where it arises.*

Academic Expert 4 explains that originally the good faith engagement procedure was not originally seen as a peacekeeping or confidence building mechanism by the High Level Group. However, it could have this effect. As he/she states:

> *In other words, when employers meet unions, they might say, look, these people are reasonable, they are civil, or not the devil in disguise. And so maybe there are advantages to us in dealing with them. For example, we will ensure that our wages stay in line with competitors, because unions will tell us what competitors are paying. And so, there will be an advantage, they might help us manage change and restructuring.*

As he/she says, the hope is that, when unions sit down and make substantive arguments to employers, employers will recognise that they are reasonable and might think *'maybe we were ideological, maybe we were ignorant'.* In the course of time, it could happen that employers acknowledge receiving important information from unions and consider recognising them. In this way the procedure could be trust-building. He/she stresses, however, that it is *'really very difficult to know how it is going to work out'.*

Academic Expert 3 states that parties could be supported around negotiation strategies and 'Best Practice' examples could be provided. However, he/she also says:

> *But in terms of increasing trust, longer term, you cannot force people to like each other. You cannot force people to trust each other. But what you can do is give them an opportunity to convince each other that they are trustworthy. And the more incentives you put in place for people to act in good faith, the better.*

Academic Expert 3 goes on to explain:

> *If you trust and respect something, even if you might not like the outcome, but if you accept that the outcome arrived after a fair process where you had an opportunity to say your piece and all that, you are much more likely to accept it. If you never engage with the process, or you feel the process is unfair, then you are not going to accept the outcome. And you are less likely the next time to accept and it becomes a vicious circle.*

One could start slowly and with some limited engagement, as building up trust takes time. At a certain point it could become self-reinforcing. Though, one always has to work on it, for example with training. As Academic Expert 3 says, one cannot stay static in the process of building trust but has to reimagine the model for new challenges.

He/she concludes:

> *But at the end of the day, industrial relations are about relationships, and always what you are looking for is the way to try and promote good relations. And to my mind, the very start of that always is to get the parties to talk, to engage.*

4.7 Trust Is Built in Crisis Situations

Also, interview participants raise the issue that crisis situations could foster the growth of trust between industrial relations actors. As Trade Unionist 1 stresses, Covid-19 was a good example of that.

4.8 Procurement as a Means

Also, public procurement would be a means to increase trust, in the sense that the state should not give contracts to any employer who refuses to engage in collective bargaining.

As Academic Expert 3 explains:

> *That is perfectly legally defensible to my mind, under the directive. (…). But this is kind of an indirect example of how you increase trust when you say, we are not giving state contracts, unless you engage collectively with your workforce. You might say: 'Okay, I do not want to, but I will, because I want the contract. And you engage with your workforce. To me, that is the best way of building trust. It*

is that we are not saying to you, if you do not want to engage, you do not get the contract. So, we are not absolutely imposing it on you, but we are giving you a strong incentive to engage.

Nevertheless, he/she states that one cannot *'magic trust'* as it will only exist if the parties want it. However, *'they can never have it, if they do not engage'*. Even if they have had the experience of getting involved with each other and still do not trust each other, no one can do anything about it. Then it is solely up to those involved.

4.9 Conclusion

Interviewees see the role of trust in Irish industrial relations as being significant. It is perceived as an essential component that makes industrial relations effective. Trust is also put in a context with values such as respect, reliability and truthfulness. Trust is seen as reducing complexity, in particular legal complexity, in industrial relations.

Interview participants generally did not perceive the current relationship between the industrial relations actors as trustful. Trade unionists pointed out that low levels of union density are connected to a lack of trust. It is perceived that the relationships and the infrastructure for trust do not exist, though collective bargaining or bargaining in good faith will not work without trust. Among employer representatives, some had good working relationships in their sector or see a good framework for building trust. In terms of trust, it is considered problematic that unions are perceived as resistant to change. Trust is claimed to vary depending on the level of engagement, having a high level of trust at the level of the relationship between ICTU and IBEC. It is stressed that there is a common goal which is moving the enterprise forward. Though, it is believed that there is mistrust existing at enterprise level and unions and employers would rather work against than with each other. Generally, there is trust in the Labour Court and its recommendations as an institution of voluntarism.

When it comes to the question of how trust can be built between the industrial relations actors, it is stressed that trust is a very personal matter and depends on the existence or non-existence of certain actors and their relationships. Those actors must be truthful and reliable for that trust to be build. The role of communications, especially informal communications, is perceived as significant. Informal communications offer the opportunity for absolute confidentiality. Trust-building is not perceived as a 'one-off' happening, but as being built up over time by 'soft compromise' and informal talks. It is also stressed that trust arises when people are committed to the organisation and its

objectives and employers are willing to engage with unions. Experiences with companies such as Ryanair show that trust can evolve by experience. Employer representatives also emphasise that trust is built based on unions' behaviour and attitudes. Employers must be able to put confidence in the unions' ability to be open to change in fast-changing times. Change must happen quickly to remain competitive. The speed of change as soon as a union is involved is considered a core issue. Therefore, it is also perceived by the employers' side that unions need the required capacities. When aiming to build trust, the LEEF Report's *Code of Practice* according to Section 20 of the Workplace Relations Act 2015, which constitutes a 'Best Practice' for firm-level collective bargaining, should be taken into account.

Trust can also be built out of the dynamics of conflict and cooperation, hence the role of conflict in pluralist industrial relations should not be underestimated. Conflict is perceived as being inherent in industrial relations and should be institutionalised in the dynamic between unions and employers and their representatives. However, the relationship between the actors is not only about conflict but equally about cooperation. When workers are committed to their organisation and vice versa, profitable high-trust surroundings can exist. Law, as an alternative to a lack of trust, cannot compensate nor create such a high-trust environment in the organisational context.

Trust can also be built by training and the creation of a certain 'industrial relations mindset' that is not only about maximising efficiency and profit.

Furthermore, trust can be built by obliging employers to engage in the process of collective bargaining. Interview participants particularly refer to engagement in the JLC process that was meant to build confidence among the industrial relation actors to lead to meaningful practice and dialogue. Also, good faith engagement is seen as a means to create trust, when employers realise that the union is not *'the devil in disguise'*. This experience might lead to a change of mindset on the part of employers. Parties could be supported around negotiation strategies and 'Best Practices'. Thus, people are given the *'opportunity to convince each other that they are trustworthy'*. One previous citation should be highlighted in particular, as it summarises the core sense of the discussion at hand quite accurately:

> *If you trust and respect something, even if you might not like the outcome, but if you accept that the outcome arrived after a fair process where you had an opportunity to say your piece and all that, you are much more likely to accept it.*

> *If you never engage with the process, or you feel the process is unfair, then you are not going to accept the outcome. And you are less likely the next time to accept and it becomes a vicious circle.*

Trust evolves slowly and experiencing procedural justice is of high importance in this regard; however, the beginning of this process is trying to get the parties to engage with each other.

Moreover, crisis situations like Covid-19 can foster trust. Also, public procurement is seen as a means of boosting trust, which means that the state should not give contracts to any employer who refuses to engage in collective bargaining. Though it is stated that this *'cannot magic trust'*, the actors *'can never have it, if they do not engage'.*

5. Evaluation of the Role of Trust in Industrial Relations

When analysing the interview participants' answers to questions of trust two general core issues were striking: trust can function as a reduction of complexity, including legal complexity and is therefore directly related to the issue of state legal intervention. Furthermore, trust can be regarded as evolving by process, not by results. This correlates with the theories on procedural justice described in Chapter 2, Part 2 of this study. Hence, these core issues should be further examined.

5.1 Trust as a Reduction of Complexity

In his books *Trust* (1968) and *Trust and Power* (1973), Niklas Luhmann raises the idea of trust as a reduction of complexity. As he describes it:

> A further example of the reduction of complexity through trust becomes significant in an increasingly organised social structure. Despite every effort of organisation and rational planning, it is possible for all actions to be guided by means of reliable forecasts of their consequences. (Luhmann, 1973, p. 28)

This idea can be applied to the dynamics of industrial relations, as this area of research is marked by legal, economic but also social implications. The relationship between industrial relations actors, as well as the relationship between certain persons in this relationship is a complex social one. Not every step they take is predictable and can be dealt with by law in advance. Industrial relations are an ambiguous environment. Also, the autonomy of the social partners in their interactions is highly valued. When trust does not exist between them, things become more difficult and complex. As a result, state legal intervention can increase in an attempt to reduce complexity or at least make it appear more tangible. But it will fail, as the attempt of law to master complexity can only be

weak compensation for complex social behaviours and actions that occur to form and forward the system at hand. In this sense, law only encroaches where systems and societies become too complex to govern without establishing rules that deal with general cases and constellations. It can only be seen as a compensation method, a rationalisation, compared with the complex concept of trust, as the law remains general and does not directly target very individual cases and all their facets. Trust reduces complexity and is complex in itself, whereby it is capable of dealing with individual complex situations in accordance with their nature. For this reason, its role is tremendously important in industrial relations.

This becomes visible notably in relation to crisis situations, where things are not predictable anymore. The pace must be increased, and well-known rules and procedures are no longer applicable. During Covid-19, the industrial relations actors had to go back to fast and voluntary negotiations and agreements and had to trust each other. Complexity was forcibly taken out of things as there was no room and time for it.

Trusting each other could lead to new trust and less complexity, as well as less need to juridify, if good experiences ensue. In the end, this has advantages for both sides. In systems with a high trust culture, mutual gains are higher with regard to respect, good communication, constructive solution finding and thereby effectiveness. However, low trust environments foster inefficiency, which is bad for both sides because of the destructive dynamics.

This is also applicable to industrial relations. None of the industrial relations actors benefit from destructive dynamics in this area. A high-trust culture in industrial relations is preferable for all its actors and ultimately, the Irish economy. Hence, it is in the particular interest of the Irish state.

Where there is high trust, less legalisation is needed, which, in the Irish case, means the more voluntarism there is, the less state legal intervention is needed.

5.2 Trust and the Concept of Procedural Justice

Industrial relations in many regards are about democratic participation in the form of industrial democracy (see Chapter 2, Part 2).

Greenberg and Folger (1983) describe the ‘fair process effect’ as people rather accepting an outcome if the procedure that reached that outcome is seen as just. This shows that

being involved in the process that leads to a certain outcome is a matter of being treated fairly and not arbitrarily. As stated at the beginning of this thesis, it could be claimed that a fair outcome therefore depends on the subjective perception of parties that they have been able to participate in its formation and their concerns 'have been seen'. Procedural justice therefore can create trust in the relationship of the actors involved in the process. As Tyler and Degoey (1995) claim: 'The ability and right to a voice is linked with feelings of respect and value, which emphasises the importance of the interpersonal factors of procedural justice.' Trust arises within the dynamic of conflict and cooperation that results in outcomes that are perceived as fair, even if it is only due to the option to participate in the process and bring up ones' arguments. Social dynamics are not static, and the corresponding results cannot be categorised as 'true' or 'false' but are the result of human behaviour (see also Luhmann, 1969). Also, as Tschentscher (2018, p. 105) states: 'Procedural justice is the correct application of a procedure that is likely to increase the chance of the outcome being just.'

With regard to 'Leventhal's Rules' as developed by Leventhal (1976), which concretise justice rules such as consistency, bias suppression, accuracy, correctability, representativeness and ethicality, it has to be said that they can create trust, if applied successfully to industrial relations processes such as collective bargaining. As mentioned in Chapter 2, Part 2, Lind and Tyler (1988) were inspired by Leventhal and developed criteria to measure how people perceive procedural fairness, which include correctness of the information, consistency, avoidance of prejudice, equal representation of the parties, reviewability of the decision by an appellate tribunal, and ethical appropriateness. This complies with the arguments that interviewees raised about how to create trust and how to improve industrial relations processes to finally achieve a balance of power in Irish voluntarism. In procedural rules, whether codified or uncodified, lies the potential to reduce complexity and the need for state legal intervention.

In the area of trust, 'communication is key', which was also stated by the interviewees. As mentioned in Chapter 2, Part 2, Habermas (1992) describes this in his 'discourse theory', which claims that outcomes are validated by the truth arising from rational discourse. The initial idea becomes a procedure, with communication as the core means. In this communication there is neither dominance nor subordination; it should happen on an equal basis. This approach is based on trust and creates trust. In the dynamic of conflict and consensus of voluntarist industrial relations it applies that there must be a balance of

powers between the actors to have such a ‘rational discourse’, which in this contexts are negotiations on an equal footing that validate the outcomes of collective bargaining.

Mutual trust can lead to the creation of new trust and less complexity in the industrial relations system. This can reduce the need to juridify the system if the industrial relations actors make positive experiences. However, experience can only be accumulated when the parties engage. This entails taking part in industrial relations procedures, like JLCs or good faith bargaining. The law can incentivise this participation. In the context of industrial relations, it can even be claimed that fairness is rather perceived in terms of a fair process than a fair result. Conflict and cooperation, as a dynamic inherent in employment relations, can be a seen as an ongoing process that creates trust; although, the arena in which it happens must be created. When procedural justice is perceived to exist, it legitimates the results and serves as a basis for future negotiations.

6. Conclusion

Trust plays a very important role in Irish industrial relations. It has the potential to reduce (legal) complexity and can be seen as the foundation for effective collective bargaining. In Irish industrial relations, trust can be built by processes and experience. State legal intervention can be seen as not enough to create balanced and efficient industrial relations without the existence of trust. However, state legal intervention can also be used to create trust and bring the parties ‘to the table’ when forcing employer participation.

PART 6: THE FUTURE OF IRISH VOLUNTARISM

1. Introduction

Should voluntarism remain the future principle of Irish industrial relations? And does state legal intervention contradict the very concept of voluntarism? Interview participants' answers to these questions are outlined in the following. The aim in this part is to outline the thoughts of interviewees on such issues as the definition and future of voluntarism. This will provide a basis for a discussion – in Chapter 5 – of the research sub questions, including 'does voluntarism still exist in Irish industrial relations?', 'are voluntarism and state legal intervention contradictory?', and 'what might future Irish industrial relations look like?' It is of the utmost importance what the industrial relations actors think about whether voluntarism should and can remain the future principle of Irish industrial relations. After all, voluntarism evolves from their will and intent to conduct and maintain it.

2. Should Voluntarism Remain the Principle of Irish Industrial Relations in Future?

The concept of voluntarism is – in terms of its non-legal character – highly dependent on the will of the relevant actors to retain and make use of it. As mentioned in Chapter 2, Part 1, Salamon (2000, p. 85) defines voluntarism as 'the freedom of the parties to organise themselves, to determine the nature and content of their relationship and to regulate it without governmental or legal intervention'. Voluntarism is at its core based on the will and intentions of the industrial relations parties. It cannot exist without their desire that it continues to exist. Thus, in particular the opinions of unions and employers and their representatives matter. It is thus of the highest interest to work out the will of the parties as regards whether voluntarism should remain the future core principle of Irish industrial relations.

2.1 Opinions of Trade Unionists

According to Trade Unionist 4, both sides of industrial relations perceive the voluntarist approach as the best way to go. However, a view has developed among the trade union community regarding who benefits from this traditional approach to Irish industrial relations. There is no obligation on an employer to engage with trade unions. Therefore, he/she states that the voluntary approach means that unions have to rely on the power of

persuasion. They '*have to persuade an employer that it is a good idea to engage with the trade union*'. As Trade Unionist 4 says, there has been a reassessment of the merits of voluntarism within the trade union movement. Even so, there are still those who say that there should be no state involvement and the state should not regulate industrial relations.

Trade Unionist 1 does not see general developments as interfering with voluntarism. As he/she states, the unions say that they will stick with voluntarism. From his/her point of view, voluntarism is the future in Ireland, unless at some point it is decided that it needs to be changed. Trade Unionist 1 states:

> *I do not think that the issue of voluntary versus anything else will change.*

He/she further explains that collective bargaining is already in place in some places:

> *And we do not want to have a legal basis for going into a place where we already have the voluntary system, which suits us.*

Trade Unionist 1 says that unions originally wanted voluntarism. He/she adds:

> *Voluntarism is great when you have two parties who want to engage, but employers become less and less engaged.*

Trade Unionist 6 explains:

> *Employers have a lot more power with the government, when there is not a collective, voluntary system. And it is about how strong the reaction is. I mean, at the end, the voluntary system did work for a longer time, and unions also supported it historically.*

He/she thinks that unions are still in favour of voluntarism. However, according to Trade Unionist 6:

> *Unfortunately, it is only going to work well if both sides come to the table with an understanding that they have to bargain in good faith.*

Trade Unionist 6 goes on to say:

> *And the voluntary system, I am not so sure how long it will survive. When the power is definitely weighted in favour of the employer to the extent that it is.*

He/she adds:

> *In relation to employment rights, obviously, the more and more legislation that has been introduced mainly to the EU, which is good, that makes it mandatory, there is a lot more employment rights dispute mechanisms, which are not voluntary.*

However, Trade Unionist 6 thinks that Ireland differs from other countries in terms of not introducing as much legislation but keeping the voluntary system. As he/she states:

And we try to, as far as possible, negotiate our way out of it, as opposed to have laws introduced.

Trade Unionist 3 is of the opinion that voluntarism should remain the defining characteristic of Irish industrial relations. He/she emphasises the advantages of the voluntarist system:

I think it has the advantage of creating a space where a problem can be resolved without having recourse – and for some employers expensive recourse – ultimately to the Civil Courts. Things can be resolved at a local level. The industrial relations machinery has been there since the early start of the last century. And can work by and large. The voluntarist system is there to encourage both sides to engage at the lowest possible level.

Trade Unionist 2 explains that the union movement is still very much in the voluntarist tradition. However, he/she states:

I think that the process of this kind of collective bargaining through the JLC structure will need to be underpinned by law. And I think that will represent a movement away from pure voluntarism, as we have known it, more to a European type of system. But I do not think as a general rule; I think the voluntarist approach is going to be still part of the Irish industrial relations landscape for some time.

Trade Unionist 2 concludes that:

So, I think my own view is that there is scope to move more of this into the statutory space, but I think the spirit of voluntarism and the ability of workers to organise collectively and consider to bargain and to consider the outcomes is something we would not want to give up lightly.

Trade Unionist 5 says that it is difficult to change the system, although there is a certain demand for that. As he/she states:

It is understood within the citizenry and within workers that there is a demand and the government is not meeting the demand, and the employers are sitting on their hands and say the current model is perfect. Ireland is doing well. We have always done well in this model, we do not want to change it.

The union has somehow to explain to the workers that the employer is not bound by the outcome even if the union goes to the Labour Court under the 1969 Act. He/she concludes:

So, there is nothing voluntary in that lopsided, unequal system. And I think it has passed its sell-by date. It needs to change. It is no longer sustainable.

The voluntarist model is *'pretty much dead anyway'*, according to Trade Unionist 5. He/she also comments on the future role of the state:

The Irish state has been a passive bystander at best, or a kind of a roadblock to collective bargaining, at worst, whereas it now needs to become an advocate, a supporter… There needs to be an all-of-government approach. When they are promoting industry, they need to also say, we want you to engage in collective bargaining where your staff want that. You know, there needs to be a culture change here. You cannot just leave it to the Labour Court, particularly when the other side is not obliged to turn up. I mean, if we had a system of binding arbitration and everybody had to turn up, and we had a very overly legalised system like that – and I am not suggesting we need to go there – but if we had that kind of system, you would say, okay, the state is not involved. It is truly voluntarist in that there is no veto. But we do not. We have the worst of both worlds.

2.2 Opinions of Employer Representatives

Employer representatives homogeneously agree that voluntarism should remain the future main principle of Irish industrial relations.

2.3 Other Opinions

According to State Representative 1, a highly respected industrial relations expert:

My view is that voluntarism has had its day. It simply is not suitable anymore for modern conditions. It worked fine when trade unions were strong. They are no longer strong. Many years ago, the idea that there would be a necessity for legal intervention so as to require collective bargaining was anathema to the trade union movement. They believed that they could enforce their will by industrial action. And by and large, up to the early 1980s, government policy was directed at encouraging, if not requiring employers to engage in collective bargaining and use institutions like the Labour Court.

He/she explains that it constitutes a problem for the concept of voluntarism that unions cannot force an employer to negotiate.

Voluntarism no longer serves the interests of trade unions or workers, precisely because they do not have the mechanisms to force an employer to negotiate or to force an employer to honour the agreements that they made. In unionised employment where there is a strong union, that can happen. But where trade union organisation is weak there in respect to issues of interest as opposed to issues of right, trade unions find it very difficult to obtain decent conditions for their members.

But what could a future system look like?

State Representative 1 says that the industrial relations system must move towards a much more regulated structure.

At the end of the day, there has to be some effective way of resolving disputes, where parties fail to reach agreement through the collective bargaining process.

> *And that probably means moving towards having mandatory requirements to engage with trade unions, mandatory requirements to facilitate the recruitment of workers into trade unions, mandatory obligation to negotiate with a view to reaching a collective agreement, you have to then look at how do you enforce collective agreements? And how do you deal with situations where parties fail to reach agreement?*

As he/she states, this means providing the Labour Court with a power to determine what the terms and conditions of employment should be. State Representative 1 states that this is an '*inevitable consequence'*:

> *And that means effectively, voluntarism no longer applies.*

3. Does State Legal Intervention Contradict the Concept of Voluntarism?

3.1 Opinions of Trade Unionists

According to Trade Unionist 1, increasing state legal intervention in the form of legal regulation is desirable to regulate Irish voluntarist collective bargaining.

> *If you look at voluntarism, I think it is going to be positive. Because it is going to give collective bargaining rights to workers who have not had it before. For us, it is not interfering with the voluntary system, because we still will have a voluntary system. So, you do not see any interference, no, you will see it just supporting the voluntary system.*

Trade Unionist 3 claims that state legal intervention does not necessarily interfere with voluntarism but possible '*unnecessary intervention'*, such as legal enforceability, does. He/she also says:

> *In the absence of enforceability, we deal with industrial issues through the normal industrial relations machinery, which is conciliation or Labour Court recommendations. And if not implemented, then some form of industrial action or strike action. (…). Before 2012, we would have had the old Registered Employment Agreements. And the legislation for those was struck down as being unconstitutional, because the Labour Court itself was making the Employment Regulations Orders under that legislation. So, our Constitution, I suppose, plays a big part in voluntarism as well. And a balance between workers' rights and employers' property rights, and the Constitution is seen as a big instrument that plays a big part in that.*

Trade Unionist 3 goes on to explain:

> *I do believe that a reduction in the amount of trade union density, that we have, means that some employers have sought to turn their back on voluntarism, and that perhaps government – yes – is intervening to try to rebalance that.*

Should there be more state intervention to regulate the balance of power? As Trade Unionist 5 states:

Yes, there should. I mean, we are not asking the state to organise workers for us. We can do that very well ourselves, but we are asking the state to create a level playing pitch. The state regulates the environment we operate in. The state. The state sets up the rules of the game. The state marks out the pitch we want to then play the game.

However, if there was a system of binding arbitration and '*everybody had to turn up, and we had a very overly legalised system'* it would not be truly voluntarist as there would be no veto. However, as the system is not like that, Trade Unionist 5 states:

We have the worst of both worlds. I would say the state really needs to get its finger out and get its act together and implement the directive.

3.2 Opinions of Employer Representatives

Employer Representative 4 says:

I think we are at a point where there is a high risk that more state intervention could well signal really the end of voluntarism, as we might have traditionally known it, and this is the balancing act. I think the government has to kind of tread carefully, because the more change is introduced, which is about either reducing employer discretion or is about affording greater worker rights in the area of collective bargaining, and in turn, obviously the rights of trade unions in that context. Then you know the implication is that voluntarism means less than it did before for employers, and that has significant implications: culturally, economically, socially and obviously reputationally. Especially in the context of Ireland where the importance of investment, freedom of choice about how organisations choose to establish their engagement model, if they choose to establish here, all of those are really important strategic considerations that certainly have to be carefully thought about by government around any reform of collective bargaining that might be contemplated.

Employer Representative 2 does not think that there is a need for increased state legal intervention to regulate collective bargaining and that laws should not be implemented. As he/she states:

We do not believe that more regulation and certainly more legislation is helpful in an industrial relations framework. Actually, our industrial relations framework is very lightly regulated. We have legislation that dates way back, and in many ways, operates as much by established practice.

He/she continues that one of the key issues in Irish industrial relations is that people cannot be forced to negotiate. Also, agreements cannot be compelled. As he/she states:

So, therefore, our voluntary industrial relations system is one whereby the parties are going to come together, there is sort of you already have that impetus to find a negotiated output, but what we would not like to see happen is that we end up in

an industrial relations environment whereby, with so much regulation, it actually becomes unwieldy and probably less efficient for the trade unions.

Employer Representative 2 points out that Ireland has far less regulation in comparison with the UK, where there is a huge amount. Nevertheless, still things work well in Ireland in terms of industrial relations and taking industrial action. He/she concludes:

I think we would prefer not to see more legislation as a way of dealing with increasing collective bargaining.

Employer Representative 1 claims that it is a choice from the perspective of an employer to voluntarily recognise trade unions and the work they do and to see the benefit of it.

It is the choice that they make for the good of their own business. So, it is a business decision, like any other business decision, that is as I would see it.

Concerning the legalisation of Irish industrial relations, he/she states:

And then I suppose the legal side, the move away, in a sense, from voluntarism to a different kind of system in the legal side of things. It is 'muddying the water' a bit.

But even voluntary agreements can eventually result in legal agreements and thereby be binding and this process then does not contradict voluntarism, as he/she says. As an example, Employer Representative 1 mentions his/her experience with the past REAs:

The registered employment agreements – there was nothing in those agreements that was not agreed. Everything was agreed. And then you went, and you registered that agreement. So, you came at it voluntarily, you reached agreement voluntarily, so our members would say: 'Yes, we see the benefit. We might like it'. Maybe the rates are higher than you would think, or whatever the case may be, but you would see the benefit as from your own business perspective. So, you would reach agreement.

He/she goes on that unions would have done the same and when they accepted the outcome, there finally was an agreement and both sides went to the Labour Court together and registered the agreement to make it legally binding. This, as Employer Representative 1 states, was *very much a voluntary agreement that became a legal agreement'*. However, he/she adds:

We cannot do that anymore. In a way, it really was the employers and unions making law, in a sense, and that is not right. And that goes against the Constitution. So now you have a situation where you apply to the Labour Court under the 2015 Act to request the Labour Court to carry out an examination of terms and conditions in, for example, the construction industry, and they make the recommendation to the minister, and the minister lays it before the Houses of the

Oireachtas and all that stuff. So that is kind of moving away a little bit from the voluntary system that we have been used to.

As Employer Representative 1 says, employers and unions would try to marry the two systems. The Labour Court setting terms and conditions for a certain sector though is more legalistic and both parties struggle to try to bring the two systems together.

That is a move away from the voluntary system to a more legal framework, and it is difficult in our industry.

But do the two systems contradict each other, or could they also support one another? Employer Representative 1 answers that one could support the other and that the voluntary system will still be in place, so it will be difficult to merge the two systems.

As he/she states:

And what we what we try to do, is kind of work both in a way, so we would have voluntary agreements, and then also we would look for the legal framework to underpin them. So, it can be a bit of a minefield at times. It is very complex.

Employer Representative 1 further explains that he/she would certainly not say *'do not introduce any more legislation'*. If workers feel that their conditions are covered by legislation, they will be in favour of it.

3.3 Other Opinions

State Representative 3 questions how the state could provide support without intervening, as from his/her point of view this is a contradiction in terms. State Representative 3 states:

I suppose that that is going to be a significant policy consideration, depending on the direction we go. And I think promises have been made.

Should there be more legal intervention by the state?

State Representative 3 answers that besides potentially legislating for things such as digital access, which in his/her eyes is not interventionist, it is just *'opening a door'* for state intervention in a forceful way. What the state has done so far, does not interfere with the voluntarist nature of the relationship between the industrial relations actors. As State Representative 3 says:

I think we are on safe ground. I think the challenge would be where we are trying to force parties, for example, into a rule ahead without them. It is not fixing any problem. So, maybe where the state could also look at is education; whether that is making sure that people in primary and secondary school understand the functioning of the social partners, understand the benefits of being a member of a

trade union, and all of that, that could be intervention without actually intervening in the relationship.

Furthermore, Academic Expert 3 does not see the legal regulations coming from the EU in the form of the EU Minimum Wage Directive contradicts voluntarism. As he/she states:

And like some would probably say, I am sure there would be an argument that it is. (...). But I mean, all the EU law initiatives are doing is saying you have to engage. (...). Now, does that hinder voluntarism? Not at all.

4. Conclusion

This part aimed to outline the thoughts of interview participants on questions regarding the definition and future of voluntarism to provide a basis – in the following Chapter 5 – for a discussion of the sub-research questions: 'does voluntarism still exist in Irish industrial relations?', 'are voluntarism and state legal intervention contradictory?' and 'what might future Irish industrial relations look like?'

Generally, unions as well as employer representatives want voluntarism to remain the future principle of Irish industrial relations. However, union representatives take this view under the restriction that voluntarism is based on a balance of power and does not favour the employers' side. In the latter case, the state should legally intervene to rebalance power in labour relations. Trade unionists perceive that this would not necessarily contradict the concept of voluntarism. On the other hand, employers see state legal intervention as an unwanted contradiction of voluntarism. For both sides, the issue of enforceability of engagement in industrial relations processes is a core issue in terms of recent state legal intervention. However, interview participants acknowledged that formal procedures are not sufficient if the corresponding mindset is lacking in the actors.

CHAPTER 5:

VOLUNTARISM RECONSIDERED AND THE ROLE OF THE STATE

INTRODUCTION

Chapter 5 will discuss the role of the state in Irish voluntarism and examine the question of whether voluntarism still exists in Irish industrial relations.

It focuses in particular on the evaluation of relations between voluntarism and the law and considers whether the two are a contradiction in terms. It takes the view that constitutional union recognition enables voluntarism and is a safeguard of further juridification. It furthermore evaluates the role of the state in Irish industrial relations and sets it in a context with *Labour Constitution Theory*. While supporting a stronger role for the state, this thesis sees a need to continue the principle of minimum state legal intervention.

This thesis brings up the idea of 'institutionalised voluntarism' as a future concept for Irish industrial relations with a stronger role of the state in it. However, it also states that 'the law alone is not sufficient' but must be supported by rules of morality and a 'voluntarist mindset' of the industrial relations actors. A decrease in union bargaining power remains a threat to any form of voluntarism.

Chapter 5 relates to the *Evaluation Framework's* sub criteria *Definition of Voluntarism* and *Future of Voluntarism* (see *Table 1*) and answers the main research question 'What role do the state and regulation play in Irish industrial relations?' In this context, it also answers the sub-research questions: 'Does voluntarism still exist in Irish industrial relations?', 'Are voluntarism and state legal intervention contradictory?' and 'What could be a future concept for Irish industrial relations?'

1. Does Voluntarism Still Exist?

This study acknowledged at the outset that there is an interdependence between voluntarism and the balance of power in industrial relations. Without a balance of power, true voluntarism de facto cannot exist. This study concluded that there is an imbalance of power in Irish industrial relations and so far, it has not been sufficiently rebalanced by voluntary or legal means. Constitutional trade union recognition and the establishment of trust in industrial relations are potential means of rebalancing the power, but they are not yet sufficiently established.

In contemporary Ireland, voluntarism can therefore exist only in a limited form. But it could also be claimed voluntarism no longer exists at all. Voluntarism is a 'somewhat slippery concept', as D'Art (2020, p. 107) puts it. Therefore, it is hard to determine, where the lines between existence and non-existence are, which leaves the concept to subjective judgement. This is why the existence of voluntarism has been discussed for decades. However, the decision on the existence or non-existence of voluntarism, being very vague and subjective, depends strongly on the will of the actors and the role of the state and the law in it.

The upshot of this research is that the industrial relations actors want to stick with the voluntarist system, which is a significant outcome. The demise of voluntarism in Ireland has been affirmed by a variety of authors who question its existence on account of the increasing intensity of state legal intervention. They include Kerr (2017), Doherty (2008), King (2006) and Teague (2005). The shift in the balance of power and increasing state legal intervention erode the basis of voluntarism, as well as its traditional definition. At the same time, however, the industrial relations parties generally confirm and support its continuing existence.

Facing unbalanced powers and increasing state legal intervention, one can at this point conclude that voluntarism at least does not exist in its *traditional sense* anymore.

It appears that the traditional definition and understanding of voluntarism no longer suffices in its own context and must thus be reconsidered. A first step in redefinition was

already made in Chapter 2, Part 1 by putting it in a necessary correlation with the concept of the balance of power.

In what follows, we consider that voluntarism is a *dynamic concept* that evolves over time. It will be evaluated whether voluntarism and state legal intervention really are a contradiction in terms, as is often claimed. Furthermore, the role of the state in Irish voluntarism will be assessed and the question posed of the extent to which the state should intervene in Irish industrial relations. A new conceptual understanding of voluntarism is developed that suits the contemporary Irish context and allows for state legal intervention to balance the power in industrial relations, without this being perceived as a contradiction in terms. It will also be suggested, however, that 'the law alone is not sufficient' for preserving or reinstating the balance of power in Irish industrial relations and maintaining the voluntarist system, and that legal regulation must be accompanied by the existence of a 'voluntarist mindset' and strong trade unions.

2. Voluntarism and the Law

2.1 Voluntarism – A Dynamic Concept

Voluntarism is a practice-oriented but also a vague and dynamic concept, and its meaning has been interpreted differently by different actors (see Chapter 2, Part 1).

As Flanders (1974, p. 352) stressed: 'to what is called the voluntary system or, sometimes, *free* collective bargaining. Whatever this may mean – and I shall be arguing that its meaning is very far from precise – there can be no doubt that this ideology is also an established tradition with considerable force.' He emphasises the imprecise terminology used and reliance on putting the concept in its context by calling it a 'tradition'. It also becomes apparent that Flanders saw a certain mindset behind the voluntarist approach, as he calls it an 'ideology'. White (1978, p. 37) even states that 'voluntarism does not seem to be a principle at all, but a set of ideas followed slavishly or jettisoned as occasion demands'. D'Art (2020, p. 107) calls voluntarism a 'slippery and ambiguous concept'. As stated by the *Report of the Commission of Inquiry on Industrial Relations* (1981, p. 11, para. 28) in Ireland and the UK, voluntarism has 'tended to be more a general attitude

than a precise doctrine'. Even in its beginnings, it 'meant different things to different people' (White, 1978, p. 36).

Voluntarism is a dynamic concept that follows practice and pragmatism. It depends strongly on the attitude and mindset of the parties involved and is a tradition that is determined by external factors. However, these external factors can change over time. Hence, the concept and the idea of voluntarism adapts and changes over time and must be (re)considered in the context of its time and circumstances.

2.2 Voluntarism and the Law – A Contradiction?

2.2.1 Origin-Based Perspective

On a closer look, even in its UK origins, voluntarism has not been in complete contradiction to state legal intervention, as Heffer (1973, p. 49) states. He explains that according to one left-wing unionist, the union movement would not have been against legislation that would help the trade unions in their struggle for better conditions. They would rather press for such legislation. Flanders (1974, p. 353) refers to this unionist statement and goes on to explain: 'Although sometimes identified with "keeping the law out of industrial relations", the voluntary tradition of today cannot possibly be equated with a distrust of all legislation (…).' As he claims: 'The balance of the mixture of voluntary and legislative action which trade unions have favoured has changed over the years and has differed from union to union, but the tradition of voluntarism in this country has never excluded a positive attitude towards some kinds of labour legislation.' On the possible contradiction between voluntarism and legally obliging the industrial relations parties to act in a certain manner, White (1978, p. 37) states that the Whitley Committee recommended strengthening JICs by allowing enforceable agreements to arise where workers and employers and their associations wanted such powers. This idea 'would have found the support of unions, and "would not have disturbed the (…) principle of voluntarism (…)"', as the author cites the words of Rodger Charles (1973, p. 39).

Gompers fundamentally shaped the original meaning of voluntarism (see Chapter 2, Part 1). His notion of voluntarism served practical and pragmatic aims, rather than being an ideology. It appeared to be the most suitable way of pursuing workers' needs as 'legal

formalism' was used at this time, to the detriment of trade unions (Rogin, 1962, pp. 522–524). Freedom from state interference was connected to individual liberty more generally (Reed, 1930, p. 96). Gompers took the view that state interference contradicted the voluntarist approach in industrial relations, however, even he was seen to recognise the significance of the state where the protection of certain standards was needed, for instance with regard to child labour or safety and working conditions in the factory (Reed, 1930, p. 118). As Mary Beard commented on Gompers (quoted in Reed, 1930, p. 118), 'when the discussion passes from the realm of general principles to that of action, no one is quicker than Mr. Gompers to recognise the significance of the state'. According to Higgins (1944, p. 30) Gompers would even 'not have hesitated to abandon voluntarism had he been convinced that another philosophy would produce more lasting results'.

In the nineteenth century, when voluntarism emerged, unions in English-speaking countries distrusted state legal intervention. They generally wanted to avoid the law because they feared that the common law was hostile to them or judges would issue anti-union judgments (Hong, 1982, pp. 749–750; White, 1978). As Charles (1973, p. 213, as cited in White, 1978, p. 37) states, the concept of voluntarism 'was established (...) because economic theory and political circumstances of the time would allow for no other [principle]'. However, the attitudes that underlie certain concepts or ideas must be seen in their historical context. Times and the political and economic context change, and concepts must adapt. In particular, nowadays unions in Ireland no longer fear fundamentally hostile behaviour on the part of the state and the courts and would rather ask for their support and even increasing legislation to protect them, as shown in Chapter 4 Part 6 of this study.

2.2.2 Contemporary Perspective

The concept of voluntarism has traditionally been understood as 'legal abstentionism'. However, Davies (2004, p. 198) states that unions might need legal support to bargain effectively. The contradiction between voluntarism in its traditional sense and state legal intervention leads to the question of whether voluntarism can still exist when there is increasing state legal intervention.

As Hong (1982, p. 750) puts it: 'With the workers left unprotected by the unions from the vicissitudes of the market, individualised *laissez-faire* often means, in a labour-surplus economy, that the employer can unilaterally impose wage rates and other conditions of employment.' However, when one side of the employment relationship is weak, the state can intervene to protect it, as 'freedom for individuals may sometimes be buttressed by statutory assistance' (White, 1978, p. 34). Originally, unions wanted to avoid the law to ward off what they perceived as the hostility of the common law or anti-union judgments and were afraid of regulatory bodies reducing their significance and attractiveness to members (Hong, 1982, pp. 749–750; White, 1978). However, Flanders already recognised in 1974 (p. 355) that there were a few 'fictions' around voluntarism: 'Perhaps the greatest of these which regularly appears as an undercurrent in popular trade union histories is the notion that unions have, as it were, lifted themselves into their present position of power and influence by their own unaided efforts in overcoming employer resistance and hostile social forces. Actually, their strikes and struggles are but one part of the story, and not always the most important. Recognition by employers, expressed in a readiness to negotiate agreements with them, has been decisive for growth in the membership of trade unions, and employers have recognised unions not simply because they had to yield to superior power but to advance their own interests.' Flanders thereby stressed the need for strong unions, as well as the need for a certain mindset among employers to recognise and negotiate with them. Indeed, industrial relations actors need the power to enforce their will. As shown in Chapter 4, Part 2, however, the current power bases of unions in Ireland are weak within the purely voluntarist sphere. According to Hong (1982, p. 750) a 'belief in voluntarism without concomitant union power' is not logical. Therefore, he stresses: 'Collective bargaining has always been likened to a legislative process of rule-making to govern employment.' Kahn-Freund (1977, p. 3) considered law to be 'a technique for the regulation of social power'. As he claims, law can shape social power, being the power 'to make policy, to make rules and to make decisions, and to ensure that these are obeyed' (Kahn-Freund, 1977, p. 3). Kahn-Freund, (1977, p. 6) also saw law as a countervailing force to bargaining power and described its purpose in industrial relations as regulating, supporting and limiting power. This can be considered as being connected to the idea of a balance of power in industrial relations with the state regulating or balancing it by legal means. Without a balance of power between the industrial relation actors, which would mean that one party has too much power over the other, voluntarism can de facto not exist. Voluntarism and state legal

intervention are therefore not a contradiction in terms. Depending on its contextual framework, legal regulation can even enable voluntarism to exist.

2.2.3 Union Recognition – Enabling Voluntarism

We have so far evaluated the relationship between voluntarism and state legal intervention. The relationship between constitutional trade union recognition and voluntarism will be examined separately. According to D'Art (2020, p. 107), constitutional union recognition fits the Irish voluntarist tradition well and could even promote voluntarism. According to the ILO (1978, p. 28), employers generally recognise unions only in cases in which it is in their interest, or where they are legally required to. As D'Art (2020, p. 107) puts it: 'Where growing employer opposition makes securing recognition increasingly problematic, then the state may intervene to create conditions where the democratic will of the employees can find practical expression and not be overridden by superior employer power.' Union recognition can be a pertinent starting point for regulating the balance of power in industrial relations, as it connects the legal dimension of power regulation with the importance of the corresponding mindset.

At the same time, union recognition does not mean that certain *outcomes* will be enforced on employers or that matters will become more binding and legalised. It does not entail an obligation to conclude collective agreements. Union recognition is about enabling a process which aims at achieving a result, but not about the particular result itself. The latter is subject to the autonomy of the social partners.

With regard to the perception that things become more legalised with acceptance of a right of union recognition, it must be stressed that the contrary is the case. Collective bargaining involves an exchange of views, an exchange of information and respect. It can at best build the trust between the industrial relations actors that is essential in a voluntarist system. If parties mutually recognise each other and interact in a constructive and trustful way, less legalisation will be needed, as the level of trust increases over time.

This is also in the interest of employers. Employers are generally sceptical towards increasing juridification and want to stick with the voluntarist system, as they fear that results and processes will become more and more legally binding and even outcomes may

not only be negotiated by unions and employers and their representatives, the relevant experts, but increasingly determined by 'third party' institutions such as the Labour Court. This shows itself in the case of EROs and SEOs, a concept whose constitutionality was challenged by the employers' side. Hence, even if employer participation in negotiations is expected under Article 40.6.1(iii)° of the Irish Constitution, no agreement is imposed on them on this basis. Collective bargaining and the corresponding negotiation outcomes basically remain voluntary.

Union recognition therefore does not legally limit bargaining autonomy. It is rather a matter of respect, a mindset within the framework of 'industrial democracy'. In contrast to legal regulation, which quite precisely regulates the conduct of the parties or even lets third parties such as the Labour Court determine certain substantive aspects and results, union recognition could even be seen as voluntary albeit with a legal basis as it leaves all further proceedings and agreements, despite recognition itself, to the parties. The constitutional *freedom of association* and the right to union recognition included therein provide the legal basis for the industrial relations parties to act on the basis of pure voluntarism. In the hierarchy of norms, it could therefore be claimed that the higher the level of law is, the more room it leaves to the autonomy of the industrial relations parties and to voluntarism. The more detailed regulation becomes, the more it impacts and potentially restricts voluntarism. The Constitution can be seen as 'setting up an arena' for the industrial relations actors, while more precise regulation determines the conduct, processes or even results in this arena and therefore limits autonomy. The constitution, on which the state is based, provides this 'arena' taking the same approach that the state was meant to take in terms of the traditional definition of voluntarism, which involved 'holding the ring' for the unions and employers and their representatives to act.

Constitutional union recognition therefore does not contradict voluntarism. It rather enables voluntarism to remain at the core of Irish industrial relations in contrast to an increasingly legalised system that impacts bargaining autonomy that neither of the parties favour. Generally, the industrial relations actors want voluntarism to remain in place, as this study has found. Union recognition provides a dependable foundation for all voluntary processes, without a high degree of legal regulation.

Furthermore, the question of whether constitutional obligations are compatible with voluntary participation could be considered superfluous, because the voluntary system must comply with the Constitution and not the other way around.

2.2.4 Conclusion

Voluntarism is not a fixed concept but a dynamic one. In the current Irish context, voluntarism and the law do not exclude each other. In a voluntarist system with unbalanced powers, the law has the capacity to provide a basis on which voluntarism can function. Therefore, state legal intervention and voluntarism are not in contradiction. Moreover, union recognition is not in contradiction with voluntarism, but rather a potential enabler of it.

3. The Role of the State in Irish Voluntarism

This study has concluded that voluntarism and state legal intervention are not contradictory. Thus, under voluntarism, the state *can* legally intervene into industrial relations. In what follows, the extent to which the state *should* intervene legally will be evaluated, given that its primary aim is still to respect the autonomy of the social partners in the voluntarist system.

3.1 Voluntarism and the Labour Constitution

3.1.1 The Economy as a Public Good and Autonomy of the Social Partners

Respecting the autonomy of the social partners while allowing the state limited legal intervention in their relationship was also the approach of Sinzheimer and his *Labour Constitution Theory*. As explained in Chapter 2, Part 2, Sinzheimer described in his scholarly article ‘Eine Theorie des Sozialen Rechts’ (1936) that labour law intended the state to recognise the actors of the economy and to empower them to act, as well as to limit their powers in the economy. Ultimately, he claims, the state also has a right to intervene in an unbalanced industrial relations system, as the economy is a public interest and determines the welfare of the whole country. The state has to act in the interests of its citizens.

The economy is not merely the private interest of certain actors. According to Dukes (2014, pp. 24–25), 'the state should assume the role in the economy of the ultimate guarantor of the public interest' as the state itself has an interest in a well-functioning economy, that is strongly connected to the social and economic conditions in the country. The author stresses that the state must therefore be legitimised to intervene to create a balance of power to the extent that the actors and results of industrial relations processes, such as collective bargaining, are sufficiently representative of both workers and employers. This is also an expression of democracy, for which the state is responsible. Even though labour law is only there to facilitate the independent regulation of employment relationships by the parties concerned, it is acceptable to apply it in this regard. This does not contradict the autonomy of the social partners, nor does it contradict voluntarism. It reinstates a partial lack of power that is necessary for the balance of power. Sinzheimer's approach to the role of the state was that while the autonomy of the industrial relations actors was essential, they should not be granted absolute freedom from state intervention as this would create an imbalance of power to the advantage of the employers' side (Dukes, 2014, p. 24). Also, unions themselves have a public function. As Kahn-Freund (1970, p. 241) stresses: 'In a sense the position of trade unions in society today is paradoxical. They are private, voluntary and autonomous organisations, but they discharge indispensable public functions.'

The abovementioned Samuel Gompers also followed this approach in his philosophy with regard to voluntarism and industrial relations. This philosophy that shaped voluntarism in its very beginnings is described well by the following remark made by Gompers during an interview with a newspaper man in his office:

> When workers' wages are reduced, they necessarily use less, consume less, because of their reduced purchasing power. Only those who ignorantly or grabbingly believe in their avarice that business can prosper with wage reductions have yet to learn the lesson of industrial life and progress. (Gompers, 1923)

Gompers saw a strong connection between individual well-being and the well-being of the economy, as workers are also consumers in the economic cycle. This approach of seeing the economy as a public interest can also be observed in Sinzheimer's theory of the *Labour Constitution*.

The approaches of Sinzheimer and Gompers assumed that the well-being of the individual is the well-being of the economy and the concerns of the workers are therefore of importance to everyone living in a certain country. As Sinzheimer puts it, acts of the state must follow this ultimate aim, as it is responsible for its citizens' sustainable well-being. According to Article 6 of the Irish Constitution, all powers of the state derive from the people and the state should reflect their will when deciding on questions of national policy 'according to the requirements of the common good'.

The state *should* therefore intervene in industrial relations to rebalance power by voluntary and – if necessary – also legal means.

3.1.2 Minimal State Intervention as a Remaining Principle

The state has a duty to intervene in industrial relations, where necessary. However, this intervention should be as minimal as possible, respecting the autonomy of the social partners, but also sufficiently high to balance power. As Wallace et al. (2020, pp. 13–14) put it, it has always remained unclear what is meant by 'minimum state legal intervention' in voluntarism. The authors explain that 'even in collective industrial relations the concept of voluntarism as "minimal legal intervention" is much attenuated' (Wallace et al. 2020, p. 14). Applied to the concept of the balance of power, minimum state legal intervention can be claimed to apply where law only rebalances the power in the voluntarist system but does not exceed this. According to White (1978, p. 35) it is very important for the state to follow an approach that facilitates voluntarism but at the same time to stay out of its core dynamics. As stated by Kahn-Freund (1977, p. 44), legal regulation can always be rigid and thereby disconnected from human nature and its 'subtle shades of expression'. By contrast, free collective bargaining can be seen as more adaptable and therefore more suitable to the issue at hand.

The state should continue to implement the policy of minimal legal intervention. However, it should be sufficient to balance power relations and create a basis for voluntarism. In short, the state should actively act as the main enabler of voluntarism but not be an active participant. As Demougin et al. (2021, p. 686) state with reference to Howell (2005) 'while the state appears to play a minimal role by abstaining from formal regulation, it acts implicitly or explicitly to legitimise voluntary action'. While adhering

to the principle of minimal intervention, the state's role will need to be a much stronger and different one than in the past, as explained in what follows.

3.1.3 Need for Stronger State Support in Ireland

With regard to Ireland, Dobbins et al. (2020, p. 89) claim that there must be 'stronger support for IR pluralism and collectivism from the state (at Irish and EU governance levels)' as in Ireland unions face institutional and legal challenges, labour market, demographic and political economic developments. Irish industrial relations are situated in a dynamic economic environment, and the state has to react and adapt to this. Regarding a shift in the balance of power, union power has been declining for several decades now. Though, as Hong (1982, p. 755) emphasises, the lack of union bargaining power combined with legal abstentionism fosters a 'situation of permissiveness' in which employers dominate the path and character of industrial relations. The state therefore has to proactively support in terms of balancing power in industrial relations, strengthening the 'voluntarist mindset' and building trust.

The Irish state has two options when it comes to intervening in Irish industrial relations. It can do it in the voluntary sphere and in the legal sphere. This was examined more closely in Chapter 4, Parts 2 and 3 of this study. The state has to engage in an ongoing evaluation of which methods are most appropriate and should be applied; in other words, whether voluntary methods suffice or it has to take the legal route. But no fixed provisions can be deployed here; state action must, like voluntarism, remain dynamic and adaptable. As Hong (1982, p. 754) puts it, 'There are two orthodox public policy alternatives for achieving labour reforms that may be inferred from the Webbs' classic study of industrial democracy. Either the State may involve itself directly by way of legislative enactment or it may do so vicariously by encouraging or supporting the two direct parties to negotiate in areas of mutual concern within the institutional framework of independent collective bargaining.' According to White (1978, p. 34) the state could also support voluntarily negotiated agreements by applying them to all workers in a certain industry.

It can be concluded that the state should intervene legally in industrial relations to the extent of balancing the power underlying the voluntarist industrial relations system. There

is need for a stronger state support. The state should act as a proactive enabler for voluntarism.

3.2 The Idea of 'Institutionalised Voluntarism' as a Concept for the Future

If voluntarism in Ireland can and should be necessarily correlated with a lower or higher – depending on the circumstances – degree of state legal intervention, voluntarism can no longer be defined in its *traditional sense*. It has to be reconsidered. As stated in Chapter 2, Part 1, the core element of the traditional definition of voluntarism is the absence of state legal intervention. This leads to the question of which concept could be applied, then, to a system that is to some extent juridified but at the same time remains voluntarist?

The idea of an 'institutionalised voluntarism' describes a situation in which voluntarism exists with the acknowledgement of interdependence with the state as an institution and regulator of its foundations, namely the balance of power. The state thereby still provides the arena for the industrial relations actors to act and guarantees autonomy, however, it also does so by state legal intervention to regulate power.

Industrial relations institutions are a medium for balancing dynamics in the Irish system of voluntarism. Established adequate procedures and institutions that are accepted by all parties with different interests can lead to effective cooperation (Salamon, 2000; Dunlop, 1958). According to Goldthorpe (1974) industrial relations conflict can be controlled by third party institutions.

There can be different forms of institutionalisation of pluralism in a pluralist industrial relations system. Besides the institutions itself, institutional pluralism also deals with the rules that regulate the relations of the different interest groups on the labour market (Dunlop, 1958). According to Roche (2001) it is recognised in Ireland that conflicts in voluntarism can be best resolved through legal or institutional state support. As Wallace et al. (2020, p. 4) state: 'Just as the political system is institutionalised and regulated through a party political and parliamentary process, so too is it desirable that the industrial system is institutionalised and regulated through representative organisations and appropriately structured processes.' This also relates to the idea of the balance of power in an 'industrial democracy' and, in this case, the state as an actor regulating it.

Institutional pluralism is therefore strongly connected to the concepts of industrial democracy and procedural justice.

Industrial relations are, at their core, about achieving procedural justice and thereby conferring legitimacy on results. This is an expression of democracy. According to Tschentscher (2018, p. 105) 'procedural justice is the correct application of a procedure that is likely to increase the chance of the outcome being just'. Tyler and Degoey (1995) claim: 'The ability and right to a voice is linked with feelings of respect and value, which emphasises the importance of the interpersonal factors of procedural justice.' Results of collective bargaining can hence be legitimated by fair procedure. The state can act as a guarantor for this and foster accordance with justice rules, as mentioned in Chapter 2, Part 2 of this study. Dialogical consensus is the source of law's legitimacy and there should be neither dominance nor subordination in discourse, as expressed by Habermas (1992). However, the interaction of procedures underlies changes due to external factors that may shape the ratio between legal regulation and collective bargaining (Kahn-Freund, 1977, p. 38). The state has to react and adapt to this, aiming to foster justice in procedures and dialogue, hence collective bargaining in particular.

In this context conflict is inherent in pluralist industrial relations (Fox, 1966). As stated by Wallace et al. (2020, p. 4), structures can lead to satisfactory compromises, collaboration and arbitration. As Fox already observed in 1966, the pluralist approach allows for the establishment of conflict resolution procedures. *The Royal Commission on Trade Unions and Employers' Associations 1965-1968 (UK Donovan Commission*) examined the UK industrial relations system and therefore took an approach of institutionalised pluralism that was based on voluntarism and also focused on the rules. However, as Wallace et al. (2013, p. 185) put it, although institutional pluralism focuses on rules, this is not in itself in contradiction with voluntarism. It is rather a question of the extent than of the 'whether and how'. Especially for unions, 'institutional security' (Clegg, 1976) in voluntarism can even provide more stability (Herry and Adler, 2004; McAlevey, 2016).

The extent to which the state should intervene legally in industrial relations, however, is not rigid and cannot be defined by a fixed pattern. Industrial relations are a flexible process that is always changing, in common with its surrounding factors of influence. The

state can try to rebalance the power in the voluntary sphere, however, it has to take legal action if this does not suffice. There can also be voluntarist and legal approaches at the same time to support the preservation or reinstatement of the balance of power. However, which means are necessary and efficient also depends on the conduct, approaches and mindsets of unions and employers and their representatives. Recommendations that suit the current situation of Ireland are listed below, under Section 4 of this chapter.

Different interest groups collide in the voluntarist system of Ireland's liberal market economy. An institutional pluralist approach in the form of state support can lead to fair procedures and can therefore foster or re-establish balance of power in the labour market. However, legal means and the need for their use are always interdependent with the behaviour of the actors in their essentially voluntarist system. *The law alone is not sufficient.*

3.3 The Law Alone Is Not Sufficient

3.3.1 Law as the Product of Human Endeavour

The law alone is not sufficient for preserving or reinstating the balance of power in industrial relations, while at the same time maintaining the voluntarist system. It might give the impression that the term 'institutionalised voluntarism' means that the state is the ultimate saviour and adequate state legal intervention alone could lead to just and effective industrial relations dynamics. However, while institutionalisation focusses on establishing rules and procedures, the latter remains meaningless in industrial relations if there are no trust and mutual recognition between the actors. Demougin et al. (2021, p. 686) emphasise that in voluntarism, actors must be committed to voluntarist practices and strategies. Also, as White (1978, p. 37) states: 'Voluntarism is more than anti-statism, though, for it also rests on the premise that people would best show a sense of responsibility (…) where this springs spontaneously from within.'

Doolan (2011, p. 1) states that 'unlike the natural sciences which have immutable laws, laws are the product of human endeavour. Law are rules of conduct imposed by a state upon its members'. As the author states, these rules constitute a 'standard of behaviour'

for the purpose of the common good. Hence it can be claimed that law arises from will and behaviour and not vice versa, which gives the latter a fairly high rank.

3.3.2 Law and Morality

As Doolan (2011, p. 1) stresses, there is a connection between law and other rules of behaviour, between law and morality. Unlike rules of law that are enforceable by courts, rules of morality are shaped and supervised by the individual and public opinion. As Doolan (2011, p. 1) states: 'In any society it is usual to find the rules of morality observed by the majority of its members reflected in the legal laws of that society.' In the voluntarist system, there is a 'moral obligation' and mutual responsibilities for employers as well as for workers to commit to the results of their negotiations (White, 1978, p. 34). Trust and mutual recognition are rules of morality that make the system work. This goes beyond legal obligations.

3.3.3 The '*Voluntarist Mindset'*

According to Clark (2000, p. 96): 'The voluntarist tradition in (…) industrial relations (…) centres on the assumption that the regulation of employment is largely ultra vires to law resting in the acceptance of legitimate conflict in an otherwise co-operative relationship.' Voluntarism is, besides its legal implications, a matter of the actors' mindsets. This may appear difficult to grasp and so it is – nevertheless, the 'mindset' of the actors in a voluntarist industrial relations system is of the highest importance. The mindset and corresponding conduct between the parties determine whether the voluntarist system works well or not. Legal regulation can never compensate for a total lack of trust, even in highly legalised or even authoritarian surroundings. As White (1978, p. 34) states: 'Freedom from legislation is quite compatible with freedom secured through legislation.' Law has the potential to provide a foundation for trust or to a certain extent compensate a lack of trust. It can never replace it, however, particularly not in voluntarist systems that are inherently based on trust in their core. As White (1978, pp. 34–35) states, referring to the words of Kahn-Freund (in Flanders and Clegg, 1954): 'While a statutory instrument may be used (…), the resultant awards or arrangements shall normally be morally binding, and "autonomous" procedures shall generally have precedence over "statutory ones".' As Salamon (2000, p. 85) states, 'both management and trade unions, as the parties

responsible for the conduct of collective relations, have an interest and responsibility to ensure that individuals on either side do not, through their actions, challenge or undermine the operation and authority of the collective system.' In the parliamentary debate on the 2001 Bill, Minister of the State Mr T. Kitt said that collective agreements, though not legally binding 'have a moral force only but in practice are no less successful for that'. He thereby acknowledged the morally binding character of voluntarist agreements. He also highlighted that 'the proposals demonstrate that free collective bargaining in a spirit of social partnership can achieve real results in progressing complex questions and can also contribute to the development of the prosperity and competitiveness of our economy'. In the parliamentary debate on the 2004 Bill, Minister of the State Mr. Fahey said: 'While differences still exist, the respect that exists between employers and unions is a solid foundation of our industrial relations regime. Long may that continue.' The Ministers of the State were hence hinting at the tradition of the Irish 'voluntarist mindset' as the core of the Irish voluntarist tradition.

This study puts the emphasis on trust, which the researcher perceives as the core element of a 'voluntarist mindset'. Trust must be increased as, according to the data, it appears that it is lacking between the Irish industrial relations actors. A number of different suggestions were made in Chapter 4, Part 5 by the actors themselves with regard to how trust could be increased. However, to establish trust, mutual recognition is the starting point. If this is not acknowledged, then processes that finally build trust cannot take place.

This leads back to the issue of constitutional union recognition. Constitutional union recognition is no more nor less than mutual recognition for the purpose of collective bargaining, which is the core process of industrial relations. Constitutional articles are rather an expression of fundamental and societal values than a regulation of certain processes. This also applies to Article 40.6.1(iii)° of the Irish Constitution and the *freedom of association*. Recognition is an enabler of voluntarism, as already described. If all aspects of the constitutional *freedom of association* are complied with, there will be less need of legalisation in future, which would be advantageous for both unions and employers and their representatives, as only they are the true experts able to democratically represent their people and regulate their affairs. As Pringle stated in the parliamentary debate on the 2015 Act: 'Even without forcing the employer to deal directly

with trade unions, it is very possible to foster a more co-operative environment, which would, in turn, lead to more resolutions.'

The Constitution does not have to be changed or amended to establish trade union recognition. It depends on the mindset of the actors, whether they respect this constitutional provision or not. However, in this regard, jurisdiction, deriving from state power, can support, strengthen and further clarify the meaning of *freedom of association* within the Irish Constitution. As stated in Chapter 2, Part 2, the Supreme Court is not bound by prior judgments (*The State* (*Quinn) v Ryan [1965] IR 70*) when it comes to allowing the Constitution to stay flexible and adapt to changing times and contexts. Even so, there must be a compelling reason to do so (Doolan, 2011, p. 63). The Supreme Court, as an expression of state power, could react to the changing context and power imbalance in Irish voluntarist industrial relations and clarify the issue of trade union recognition as a value pertaining to Irish society, in particular as a court decision should serve to represent the will of the citizens (*Curtin v Dáil Éireann, [2006] IESC 14*). The Supreme Court already started to do so in the *Unite* case. It showed a 'voluntarist mindset' when interpreting Article 40.6.1(iii)° of the Irish Constitution and stating that the right to form trade unions *'would be of little benefit if the activities of the union and its members were to be regarded as presumptively unlawful*' and claimed that common law tended to ignore the inequality of bargaining power (para. 59).

Originally, the common law was not congenial to trade union activity. However, a change in Irish common law jurisdiction can possibly be observed and further extended. While the Labour Court should only help and support the collective bargaining parties to autonomously regulate their affairs in Irish voluntarism, the Supreme Court's role is to clarify the basis of their interactions. The Constitution must be interpreted in light of human rights and embodies human values (*McGee v Attorney General [1974] IR 284).* As judge Walsh J stressed concerning the flexible nature of the Constitution and the need for it to adapt to changing values in Irish society: 'It is but natural that from time to time the prevailing ideas of these virtues must be conditioned by the passage of time' *(McGee v Attorney General [1974] IR 284).* Most recently, the EU Minimum Wage Directive has called on the EU Member States to strengthen the social partners' capacity to engage in meaningful negotiations and guarantee the right to collective bargaining. This shows the

current European approach to collective bargaining, as well as the requirement that states and their jurisdiction adhere to it.

Ultimately, union recognition is not only a legal obligation; it is an essential part of the 'voluntarist mindset' and a constitutional value. In practice, it is a method of avoiding high degrees of juridification; a method of enabling the social partners to deal with each other autonomously on an equal basis and reach satisfactory results that are adequate to the current challenges of the economy, resulting finally in a sustainable well-run economy that all actors may benefit from.

3.3.4 Union Weakness Remains a Threat

Apart from the potential effects of a certain amount of state legal intervention and constitutional union recognition in Irish industrial relations, trade union weakness remains a threat. Unions are democratic bodies representing the workers' wishes and therefore they naturally have an important and respectable role in a democratic state. At the same time, they therefore depend strongly on the Irish people and their involvement in the issues. Chapter 4, Part 1 mentioned that increasing individualism und neoliberalism in society constitute a problem for unions. This concerns their ultimate legitimation and is a matter that the state can regulate or change by law only to a limited extent. In summary, unions' bargaining capacity does not depend only on legal or constitutional support, but on popular support. Collectivism is the source of union power (Casey, 1972).

The existence of strong actors in industrial relations can lead to industrial peace. This was already highlighted by the *Industrial Council Report* in 1894 (para. 29) during the rise of voluntarism. It warned that 'where trade unionism is in a weak or struggling condition [this] tends to increase the number and bitterness of industrial conflicts'. The report also stressed the importance of moral commitment in industrial relations. Hong (1982, p. 755) states that in a voluntarist system where unions are weak, social justice and the moral basis of voluntarism are a concern. He claims: 'Where unions are weak, this involves the risk that an interventionist government may alienate the workers from them and compromise the full development of the voluntary movement' (Hong, 1982, p. 753). The decline in union bargaining power cannot be counteracted only by law nor would it be responsible to recommend a higher dependence on it as governments and their political

orientation can change. Ideas on what unions can in the voluntarist sphere to increase their bargaining power are outlined in Chapter 4, Part 2.

3.4 Conclusion

The role of the state in Irish industrial relations is to balance the power in industrial relations that underlies Irish voluntarism. To sufficiently rebalance the power, the state *can* and *should* legally intervene to ensure that voluntarism remains the future principle of Irish industrial relations in case that measures in the voluntarist sphere do not suffice to rebalance this power between the industrial relations actors. This does not contradict voluntarism, if reconsidered as an 'institutionalised voluntarism' where strong legal state support is inherent. At the same time, it should only intervene to the necessary extent to balance the power between the industrial relations actors and respect their autonomy. Moreover, it should foster the 'voluntarist mindset' and trust building between the actors.

However, the state is not the 'ultimate saviour'. Industrial relations are primarily about the relationship and interaction of the industrial relations partners. Law can attempt to balance the power in this relationship and foster mutual recognition and trust. But it is not the only solution.

4. What Measures Could the State Take to Rebalance Power in Irish Industrial Relations?

All in all, the state should rather be proactive than reactive in shaping the development of good industrial relations, not only seeking to compensate its deficiencies.

If increasing trust and mutual recognition is not achieved in a voluntary or engagement-related way, which did not occur so far, it is necessary for the state to intervene legally. In the end, this is not only a national decision but arises from EU law, as recently under the EU Minimum Wage Directive. All industrial relations actors should be aware of this and engage in the voluntarist system with the corresponding mindset, if they want voluntarism to remain.

Concrete measures that the state could take include the following.

Measures in the voluntarist sphere:

- (Re)establish partnership at national level, where unions are not only informed but seen as equal negotiation partners.
- Provide training to the industrial relation actors and thereby strengthen their trust-related 'voluntarist mindset'. In this context, promote constitutional values such as union recognition or union access to companies and thereby mutual recognition for the purpose of collective bargaining as basis of the 'voluntarist mindset'.
- Use interpersonal contacts and panels to foster this mindset and build trust.
- Provide training for unions to increase their capacities on modern issues such as 'artificial intelligence' or work–life balance and thereby increase their openness to change correspondingly or improve their negotiation skills and strategies.
- Support unions in providing their members with personal and financial security in the case of union-related activity and industrial action.
- Support unions in efforts to increase their capacities, such as legal or communications, for example, helping them become financially able to employ or consult the corresponding staff.
- Facilitate union access to important information.
- Support unions in building national, European and international networks and foster their knowledge exchange.
- Strengthen the value of collectivism in society either by helping unions to promote this value or attempting to foster this mindset in public institutions, such as schools.

Measures in the legal sphere:

- Strengthen the right to union recognition for the purpose of collective bargaining provided by Article 40.6.1(iii)° of the Irish Constitution.

  This can be done by further Supreme Court interpretation of the corresponding constitutional article. The latter highly depends on the judge's mindset and interpretation of the law as the judge is independent and free from any instructions.

  Furthermore, statutory law can be used in a declaratory way to show the rights granted by Article 40.6.1(iii)° of the Irish Constitution and thereby give more visibility and effect to them.

In this context, increase protection against discrimination for union-related activity and counteract the impression of 'illegality' traditionally linked to union activity by legally allowing unions to access company sites.

- Recognise the importance of collective rights in the shadow of increasing individual rights and therefore promulgate further powerful Industrial Relation Acts, if needed.
- Foster employer participation in collective bargaining processes by state legal intervention to increase trust and mutual recognition. In particular, mandate 'good faith engagement'.
- As long as respect for the Labour Court is strong, recommendations can remain non-binding. However, if respect and the acceptance rate of recommendations decrease in future, the Labour Court could be transformed into an institution that issues binding decisions. This would be the definite end of voluntarism and represent a decision for a distinctive and new system of industrial relations.

Furthermore, the state should determine suitable and relevant measures in accordance with the EU Minimum Wage Directive in the voluntarist, as well as in the legal sphere and use this opportunity to create a 'game changing' moment to re-establish voluntarism. The corresponding action plan was issued when submitting this thesis and further research should be conducted in future concerning whether the state has achieved this goal.

5. Conclusion

This Chapter answered the final sub-research questions 'Does voluntarism still exist in Irish industrial relations?', 'Are voluntarism and state legal intervention in contradiction?' and 'What could be a future concept for Irish industrial relations?' It answered the main research question 'What is the role of the state in the Irish voluntary industrial relations system?' It concluded that voluntarism, though weakening, still exists and can remain in place, albeit in a revised form. If voluntarism remains the basic principle underlying Irish industrial relations in future, the state has to support the industrial relations actors in the voluntarist as well as in the legal sphere and unions must take action to halt their decline. The state therefore plays an important role in Irish industrial relations that exceeds the traditional perception of the absence of state legal intervention and the state just 'holding the ring' for the industrial relations actors to

interact without intervening in their affairs. The state rather has to take measures in the voluntarist sphere and, if this does not suffice, in the legal sphere to rebalance power in the industrial relations system. It should therein act on the basis and taking into consideration the values of the Irish Constitution and thus Irish society. All in all, it can be concluded that the state should play a stronger role in Irish industrial relations than it formerly did. This does not contradict voluntarism but would finally enable it to continue as the core concept of Irish industrial relations.

CHAPTER 6:

CONCLUSION

1. Introduction

This study has explored the role of the state in Irish voluntarist industrial relations. It sought to define and reconsider Irish voluntarism. It evaluated whether voluntarism still exists and developed a suitable concept for future Irish industrial relations. It analysed what challenges exist to the balance of power between industrial relations actors in Irish voluntarism and evaluated whether and how this power could be rebalanced within the voluntarist and legal spheres. The research therefore looked at the national, European and international implications. It evaluated the existence of constitutional trade union recognition in Ireland, as well as the role of trust in Irish industrial relations.

The goals of this study were intellectual as well as practical. While voluntarism is discussed as a theoretical concept, the question of its existence or non-existence impacts on the industrial relation actors' behaviour and their approach to collective bargaining. Defining the role of the state and thereby taking into account the relevant legal implications is very important for the Irish legislature and judiciary. The role of law in industrial relations is a remaining core issue of discussion in this area, which was raised most prominently by Otto Kahn-Freund. This discussion remains relevant today and will continue to be an issue of fundamental discussion in this seemingly contradictory dynamic.

This chapter will outline general conclusions (2), as well as the specific results in accordance with the main research question and sub-research questions (3). It will discuss the generalisability of the findings (4), as well as the contribution and implications of this research (5). Finally, it will outline limitations and possible approaches for future research (6) and draw a final conclusion (7).

2. General Conclusions

This study concluded that within the pure voluntarist sphere, a balance of power does not exist between the industrial relations actors and, at least to date, could not be rebalanced by purely voluntarist means and approaches.

The Irish state, being aware of this state of affairs, has promulgated legal regulations in the area of individual and collective labour law over time, but this has not managed to rebalance power either to the extent that voluntarism is able to function freely or in the way that was originally intended.

This research concluded that constitutional union recognition for the purpose of collective bargaining is a mandatory component of constitutional *freedom of association* arising under Article 40.6.1(iii)° of the Irish Constitution. However, this is not fully accepted among the industrial relations actors, in particular due to fears of a negative impact on FDI. However, union recognition should be part of the 'voluntarist mindset', as this study shows.

This study finds that the element of trust is extremely significant in Irish industrial relations. However, trust is built by experience, not law. Nevertheless, law can help to increase the chances of trust-building situations, for example, by fostering the engagement of both parties in processes such as sectoral wage setting or good faith engagement. Law either serves trust or compensates for a lack of it. Mutual recognition between the industrial relation actors is a starting point for enabling processes that can create trust. However, this entails a certain mindset among the actors and the existence of such a 'voluntarist mindset' is indispensable for the existence of voluntarism.

All industrial relations actors must make an effort to increase acceptance and trust and (re)develop the 'voluntarist mindset'. The state can help to rebalance power in the labour market, but its legal interventions should be limited to the point at which this goal is reached, always respecting the social partners' autonomy, as they are the 'experts' and also democratic representatives in their field. It should foster trust and mutual recognition.

If an increase in trust and mutual recognition is not achieved, increasing legalisation will be the consequence in order to meet substantive and national requirements, but also requirements coming from the EU. None of the industrial relations parties favour this situation as it might even restrict their bargaining autonomy and influence specific outcomes, although only the actors themselves are the real experts in the field.

Voluntarism can remain the future principle of Irish industrial relations if it is redefined and reinstated. Voluntarism can no longer be seen as limited to 'legal abstentionism'. Its definition has to be extended by the underlying concept of balance of power, which must in practice exist or be rebalanced, if it does not. This can be carried out by the actors

themselves or by the state, mainly in the form of state legal intervention. State legal intervention in this case is not in contradiction with voluntarism.

The state even has a duty to balance the power that underlies Irish voluntarism to reinstate it in its original sense as it is responsible for the welfare state and an efficient economy, which are in the public interest.

3. Specific Results

In what follows, the specific results of this study will be outlined with regard to both the main research question and the sub-research questions. Following the general conclusions, this will allow the reader to comprehend the interim and final results vis-á-vis the research questions.

Sub-Research Question 1:

What are the challenges to the balance of power in Irish industrial relations?

There are a number of challenges to the balance of power in current Irish voluntarism.

A shift in the balance of power is perceived as to a decrease in union bargaining power, which results from a lack of union recognition and capacity to organise workers. Collectivism in society decreases, while individualism increases. Diminishing bargaining power leads to a shrinking of collective bargaining, which constitutes a challenge to the traditional concept of voluntarism based on a balance of power. Also, the mindset of employers constitutes a challenge to the balance of power as in particular US American MNCs generally tend to not recognise trade unions. The lack of employer engagement in Irish industrial relations constitutes another challenge to the balance of power, in particular with regard to JLCs. Employers become less and less engaged in voluntarist collective bargaining. Also, growing legal activism can be observed on the part of employers and they tend to challenge existing law.

Sub-Research Question 2:

To what extent can power be rebalanced in the voluntarist sphere?

Generally, there are insufficient means in the purely voluntarist area to rebalance the balance of power in Irish industrial relations. In particular, the new 'social dialogue' is seen as very different from the former social partnership as unions have no real influence and are merely passively informed. Although industrial action is traditionally unions' main power resource, the power of persuasion is weak because of decreasing union density, weakening of collective solidarity and fear of employers. However, the need for solidarity and collectivism is still somewhere 'out there'. Unions should therefore define and communicate their benefits and values, in particular with regard to young people. Promoting the value of collectivism is a 'delicate balance' for the state, however it should support unions by providing for qualified personnel such as marketing experts, providing training and explaining the role of industrial relations in education. Unions have to strengthen their legal and strategic capacity and increasingly build networks at EU level. Unions and employers and their representatives should negotiate on the basis of the 'bigger picture'.

To date, it has not been possible to rebalance power in industrial relations within the sphere of 'pure' voluntarism, and so without resort to state legal intervention. Some suggestions on how to improve the balance of power by purely voluntarist means can be found in Chapter 4, Part 2 of this thesis.

Sub-Research Question 3:

To what extent can power be rebalanced in the legal sphere?

The balance of power can only partly be rebalanced by legal means. Collective labour law, in particular the Irish Industrial Relations Acts, is supposed to rebalance the power underlying Irish voluntarism. However, it has exhibited significant deficiencies in its practical impact. State legal intervention plays an important role, although the law alone cannot sufficiently rebalance power between the Irish industrial relation actors and thereby allow true voluntarism to take place.

The EU Minimum Wage Directive is a potential game-changer as it demands that EU Member States implement measures to increase collective bargaining if coverage is below 80 per cent. At the time of the submission of this study, Ireland had issued an action plan to strengthen collective bargaining, which should be further examined by future research.

As one core deficiency of the Irish industrial relations system is the lack of employer engagement in voluntarist collective bargaining, they could be legally obliged to participate in these procedures at sectoral and firm level. In particular, good faith engagement is a potentially effective means of increasing employer engagement in collective bargaining and thereby balancing power between unions and employers and their representatives.

Sub-Research Question 4:

Does constitutional trade union recognition exist and what are the implications?

In light of international and European norms and standards and the development of national and European case law, constitutional union recognition for the purpose of collective bargaining is a constitutional right arising under Article 40.6.1(iii)° of the Irish Constitution and the *freedom of association*. It would be unlawful to restrict it to a mere right to join and form a trade union. Bargaining on the basis of a social purpose is the main reason for trade unions to exist and at the same time their democratic legitimation. As stated by D'Art (2020, p. 83), the 'freedom to associate is a hallmark of a democratic state' and mutual recognition for the purpose of collective bargaining should be the core of the 'voluntarist mindset'.

However, the topic of union recognition is controversial in Ireland, in particular due to fears of the impact of official acknowledgement on FDI, on which Ireland is highly dependent. This may well be an unfounded fear as Ireland has much more to offer foreign investors than non-recognition of unions.

Arising from the right to union recognition, access to the company side must be granted under Article 40.6.1(iii)° of the Irish Constitution. Workers and shop stewards are not sufficiently and must be increasingly protected by law from being discriminated against for union-related activity. To establish all of these rights, there is no need for a

constitutional referendum as they are already existent as part of the constitutionally protected *freedom of association*.

Sub-Research Question 5:
What role does trust play in Irish industrial relations?

The role of trust in Irish voluntarist industrial relations is significant and crucial. It is an essential component in making industrial relations procedures more effective. Trust reduces complexity. It also reduces legal complexity, which to a certain extent threatens voluntarism. Therefore, the establishment of trust serves voluntarism. Trust is built first and foremost by experience and the law can help to establish it only to a limited extent. State legal intervention, however, can help to establish procedures that may help to establish trust by experience. Besides this, trust building also takes place at a very personal level and depends on particular persons' truthfulness and reliability. Both unions and employers and their representatives must therefore reconsider their attitudes and mindsets towards voluntarist collective bargaining and mutual perception and conduct and thereby meet the national and global challenges characteristic of the modern world.

Generally, the role of conflict should not be perceived as negative in industrial relations. The dynamic of conflict and cooperation inherent in industrial relations can help to build trust as it leads to information exchange and experiences. While the state can provide a basis for this to take place and 'bring the parties to the table', it is the responsibility of the industrial relations actors themselves to make this experience a good and constructive one that both sides of the labour conflict can profit from. This is also done by establishing a 'voluntarist mindset' based on mutual recognition.

If this is not achieved, legal complexity will increase as a result and the downside of 'trust reducing complexity' and will threaten the voluntarist system as whole.

Sub-Research Question 6:
Does voluntarism still exist in Irish industrial relations?

The question of whether voluntarism still exists in Irish industrial relations is difficult to answer. While consensus exists among researchers on the demise or weakening of voluntarism, the evaluation of its existence or non-existence remains vague. This study concluded that in contemporary Ireland, voluntarism exists only in a limited form and not in its *traditional sense*. The current practice of Irish voluntarism does not meet its original intention.

The research at hand evaluated different facets of this sub-research question, such as the traditional definition of voluntarism or the perceptions of the industrial relation actors concerning whether it exists or does not exist. It concludes that voluntarism is a dynamic concept that changes over time and reconsiders it, adding the prerequisite of an underlying power balance, as well as a need for state legal intervention to reestablish such a balance. Voluntarism can therefore no longer be defined by the existence of 'legal abstentionism' but must acknowledge its institutional dependency on the state to a certain extent.

Sub-Research Question 7:
Are voluntarism and state legal intervention in contradiction?

State legal intervention and voluntarism are not in contradiction. State legal intervention does not contradict the bargaining autonomy of the social partners as long as it is applied only to rebalance power among industrial relations actors and thereby enable voluntarism to take place and remain in place as the principle of Irish industrial relations going forward. When one party in the labour conflict has too much power over the other, voluntarism can de facto not exist. As voluntarism is a dynamic concept that changes over time in terms of external factors, the legal interventionist approach must also remain adaptable and react to certain evolving power imbalances.

Though, 'the law alone is not sufficient' to preserve or reinstate the balance of power in Irish industrial relations and maintain the voluntarist system. Legal regulation must be accompanied by a 'voluntarist mindset' among the industrial relations actors and the existence of strong trade unions. In this context, also constitutional union recognition can

enable Irish voluntarism as it incorporates the 'voluntarist mindset' of mutual recognition in its core, being a value-driven fundamental right. Union recognition provides a basis for voluntary processes, without a high degree of state legal intervention, if recognised by the actors.

Sub-Research Question 8:

What could be a future concept for Irish industrial relations?

As voluntarism cannot be defined in its *traditional sense* anymore, as already mentioned, the concept has to be reconsidered.

This study has developed the notion of 'institutionalised voluntarism' in which the role of the state and legal regulation is acknowledged as being stronger than in the past. This concept can be applied to a system that is increasingly juridified but at the same time remains voluntarist. The state still provides the arena for the industrial relations actors to act and guarantees autonomy as in the traditional definition of voluntarism. However, it also does so by proactive state legal intervention to regulate power relations. As Wallace et al. (2020, p. 4) state: 'Just as the political system is institutionalised and regulated through a party political and parliamentary process, so too is it desirable that the industrial system is institutionalised and regulated through representative organisations and appropriately structured processes.' As an expression of democracy, industrial relations at their core aim at achieving fairness and thereby bestowing legitimacy on outcomes. The state can provide for these processes to take place by legal means, to the extent necessary. This approach to the state's role as one of 'being in charge' is different from the traditional perception of the state keeping out of industrial relations.

MAIN RESEARCH QUESTION:

What is the role of the state in the Irish voluntary industrial relations system?

According to the idea of 'institutionalised voluntarism', the state has to play a strong and proactive role in industrial relations. If measures in the voluntarist sphere do not suffice

to rebalance the power in industrial relations, the state *can* and *should* legally intervene to ensure that voluntarism remains the future principle of Irish industrial relations. It is even compelled to do so by constitutional, European and international law. It should continue to highly respect the autonomy of the social partners in Irish voluntarism and should only intervene to the necessary extent. The extent to which the state should legally intervene in Irish industrial relations is not based on a 'rigid line' but intervention should be as strong as necessary to rebalance the power while at the same time minimal, to protect bargaining autonomy and voluntarism. As voluntarism evolves dynamically and adapts to changing external factors, the state has to remain adaptable, too, and shape the frame proactively by voluntary as well as legal approaches. Actions that the state could take within the voluntary sphere are listed in Chapter 5 of this study. However, if voluntary means do not suffice to balance the power, the state can and should take legal action.

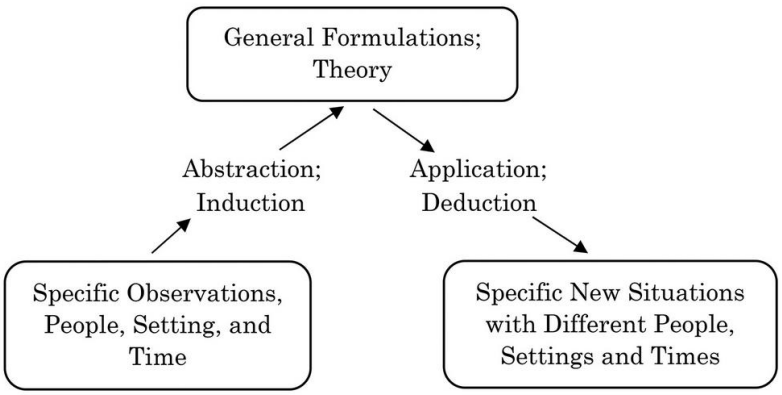
The state can thereby support the preservation or reinstatement of the balance of power and allow voluntarism to continue to function and remain in place. However, it also depends on the conduct, approaches and mindsets of unions and employers and their representatives whether this can be done successfully, as only they are the specialists in this. *The law alone is not sufficient*; neither is the state the 'ultimate saviour'. But it can pertinently support the industrial relation actors in their voluntarist conduct and trust building. It also has the obligation to do this because, as already stated by Hugo Sinzheimer, the state represents the citizen's will and is responsible for the well-being of the individual and the economy. After all, the economy is a public good. Nevertheless, state legal intervention should be minimal, hence only to the necessary extent to protect bargaining autonomy and the connected democratic principle. In this way, the state can be an enabler of voluntarism without restricting it.

4. Generalisability of Findings

The generalisability of findings in qualitative research is generally called into question. According to Denzin (1989), interpretivist qualitative research resists generalisation as qualitative research describes complex singularities of social interaction. Indeed, this kind of research often describes complex and versatile situations and their perception of individuals. Qualitative research as such does not perceive issues of research to be

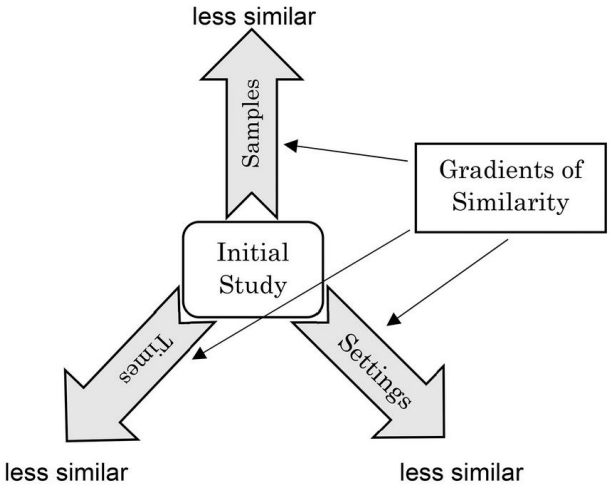
objective and measurable (and therefore easily transferable), but sees the world and situations as subjective constructs, reliant on the perception of individuals. It therefore appears difficult to generalise these types of findings. Generalisation is a process of abstraction, applying a certain result back again to the individual case, as shown in the following figure:

Figure 7: 'The process of generalisation'
as depicted by Drisko (2024); adapted from Mayring (2007)



The data collected for this study was unique and arose from a very specific context and situation that is always changing, namely Irish voluntarism and the role of the state in it. However, the results of this study can partly be used for generalisation and application to similar contexts or systems. However, the more an industrial relations system differs from the researched one, in contextual or temporal terms, the less meaningful generalisation becomes. Within the process of transferring research outcomes, which is a process of abstraction from specific cases to the abstract level and back to the individual case for interpretation, nevertheless, generalisation can take place to a certain extent. According to Campbell (1986), case-to-case transfer is valid where there are similarities between people, settings and times and therefore they are comparable. However, the author stresses that neither qualitative nor quantitative research is generally and automatically generalisable; in fact, new situations must always be examined and evaluated regarding potential fits.

Figure 8: 'Proximal similarity generalisation'
as depicted by Drisko (2024), after Campbell (1986) and adapted from Trochim (2006)



This study evaluates the role of the state in Irish voluntarism. It raises issues and outcomes that could be applied to other industrial relations systems, particularly voluntarist ones. The research deals with the particularities of the Irish system. However, while it deals with some very specific issues that are unique to the Irish system and key experts' views on it, it also raises some fundamental questions that have been under discussion for a long time and are of general importance and applicability to a variety of other industrial relations systems. This includes the role of the state and the law within the framework of bargaining autonomy under *freedom of association*, which is a core feature of many constitutional states. Constitutional interpretation also contains transferable logics, as well as the issue of trust and trust building. In this study, those general assumptions have been applied to the Irish case in the course of the research. They can generally be applied to other systems in the same or a similar sense. As voluntarism is the traditional concept of industrial relations in other countries as well, thoughts on its meaning and purpose can also be transferred to those settings and are therefore generalisable. As besides national and international law, European law plays an important role in collective bargaining, the probability of the generalisability of findings is higher among European countries than among countries outside the EU, which moreover are often characterised by differing cultures, political systems or societal core values.

5. Contribution and Implications

This study makes a theoretical contribution to the research on voluntarism and the role of the state and the law in industrial relations. As little research has been conducted on voluntarism and the role of the state in Irish industrial relations it contributes to a complex field of study. This applies especially as this study provides a current view of the key experts in Irish industrial relations and hence data and results are particularly meaningful and show the topic from all relevant perspectives. This also suits the recent context as up to this point it has remained uncertain where Ireland is heading in terms of a future industrial relations approach. At the same time there is rising demand for clarification on this issue, deriving from fast changing external circumstances, as well as national and European legal requirements under which the state must take action to design and shape the future system of Irish industrial relations, either in a voluntary or an increasingly juridified way. This study aims to contribute to this process of potential change and rethinking.

This thesis has many implications for the theory and practice of Irish industrial relations. Results and suggestions appeal to unions, employers and their representatives and the Irish state. All Irish industrial relations actors must increasingly develop a 'voluntarist mindset' and be clear about the meaning of voluntarism in Irish industrial relations today.

Unions must counteract union density and increase their capacities and capabilities. They should modernise themselves and adapt to fast-changing and international environments. They can thereby maintain the democratic tradition of unions representing workers, show its significance and increase their bargaining power, which is still their core instrument of power within collective bargaining.

Employers should improve their 'voluntarist mindset' and recognise their own interest in participating constructively in collective bargaining. If traditional voluntarist approaches do not work anymore, further legalisation will bring about more complexity and potential disadvantages. Employers should therefore enable voluntary and fair procedures – with the potential for trust building – and then contribute to the design of processes themselves in order to prevent being forced to accept certain determinations for their employees in the development of which they did not even participate. Employers should therefore not see voluntarism as their chance to reject engagement but as a chance to find the best possible solution and build trust for future negotiations or crisis situations.

The state should increasingly intervene in Irish voluntarist industrial relations to rebalance power between the industrial relation actors. It should therefore be proactive and firstly try to rebalance power within the voluntarist sphere. However, success in this sphere depends on unions and employers and their representatives acting correspondingly and showing a 'voluntarist mindset'. In case the latter is not successful and power remains unbalanced to the extent that voluntarism is de facto not in place, the state must take legal action. In particular, the state should foster trust building and therefore target legal action at collective bargaining processes, rather than determining certain results, for example, by Labour Court rulings. The state can do so by issuing more statute law or by increasingly being clear about the interpretation of the Constitution in Supreme Court decisions. The judgment in the *Unite* case was a pertinent start.

6. Limitations and Future Research

Research is subject to limitations. This thesis was conducted as qualitative research based on interviews with key experts and figures in Irish industrial relations. While it displays specific expert knowledge on the topics at hand and is therefore highly significant, interview participants are also individuals with subjective views and their own intentions and values. Furthermore, the data provided by interviews show the one-off opinions of certain individuals at certain points in time. The researcher aimed to curb subjectivity when analysing the data by being aware of the context and intentions of participants. However, this interpretation of the data background is also subjective. Neither qualitative nor quantitative data can ever claim to be completely objective, as it arises from individuals. Moreover, the qualitative data for this study was extensive, so the researcher had to decide what data to consider and discuss and to what extent. While the researcher respected the need for objectivity concerning topics and citations from an ethical point of view, subjectivity can never be avoided within the process of data selection and presentation. It is therefore reasonable to state that a certain amount of subjectivity is inherent in academic research. In the end, the important thing is that researchers always be aware of this circumstance regarding their own or others' research results and that they remain humble, careful and attentive in their judgements and consequent actions.

The findings from this study identify various issues which are worthy of further investigation. They include:

- Further research on the meaning and recent systems of voluntarism
- Further examination of the issue of trust in industrial relations
- Further evaluation of union recognition, in particular, further examination of the correlation between union recognition and the loss of FDI in Ireland
- Examination of the Irish Action Plan under the EU Minimum Wage Directive and its impact on Irish industrial relations

7. Final Conclusions

This study has evaluated the role of the state in Irish industrial relations and answered the question of whether industrial relations in Ireland are still voluntarist. While Irish industrial relations are no longer voluntarist in a traditional sense, the role of the state, moving from non-intervention to legal intervention with the aim of rebalancing the power that underlies Irish voluntarism, determines the existence and future of voluntarism in Ireland. Voluntarism must be reconsidered. It is up to the industrial relations actors and the state to handle this change in a proactive and constructive way so that voluntarism can remain the future principle of Irish industrial relations. If voluntarism can be re-established on the basis of trust and mutual recognition with the help of the state, this system can be one from which all sides benefit, whether they be workers and their unions, employers and their representatives or the Irish citizens in the form of the Irish state.

BIBLIOGRAPHY

Anne O'Connell Solicitors (2021) 'Supreme Court Rules on Sectoral Employment Orders', *AOC-News*. 1 July. Available at: https://aocsolicitors.ie/supreme-court-rules-on-sectoral-employment-orders/ (Accessed: 2 November 2024).

Arthur Cox (2019) 'When will a shop steward's actions be trade union activities and when will they be something else?', *Arthur Cox*, 13 May. Available at: https://www.arthurcox.com/knowledge/when-will-a-shop-stewards-actions-be-trade-union-activities-and-when-will-they-be-something-else/ (Accessed: 4 April 2024).

Arthur Cox (2020) 'High Court Finds Sectoral Employment Orders and Relevant Industrial Relations Legislation are Unconstitutional', *Arthur Cox*, 1 July. Available at: https://www.arthurcox.com/wp-content/uploads/2020/07/Sectoral-Employment-Orders-are-Unconstitutional.pdf (Accessed: 2 February 2025).

Association of General Medical Practitioners Ltd v Minister for Health [1995] 2 ILRM 481.

Association of General Practitioners v Minister of Health [1995] WJSC-HC 86.

Barry, F. (2007) 'Foreign direct investment and institutional co-evolution in Ireland', *Scandinavian Economic History Review*, 55(3), pp. 262-288. doi:10.1080/03585520701776076.

BDI (2025) 'German Mittelstand'. Available at: https://english.bdi.eu/topics/germany/german-mittelstand (Accessed: 5 May 2025).

Benedict McGowan and Others v Labour Court and Others [2013] 2 ILRM 276; [2013] IESC 21; [2013] 3 IR 718.

Berg, B., and Lune, H. (2014) *Qualitative research methods for the social sciences*. 8th edn. Harlow, UK: Pearson Education.

Braun, V., and Clarke, V. (2006) 'Using thematic analysis in psychology', *Qualitative Research in Psychology*, *3*(2), pp. 77–101. doi:10.1191/1478088706qp063oa.

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), International Labour Organization (1948). Available at: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232 (Accessed: 2 September 2025).

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98), International Labour Organization (1949). Available at: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312243 (Accessed: 2 September 2025).

C154 - Collective Bargaining Convention, 1981 (No. 154), International Labour Organization (1981). Available at: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C154 (Accessed: 2 September 2025).

Campbell, D. (1986) 'Relabeling internal and external validity for applied social scientists', *New Directions for Program Evaluation*, 31, pp. 67–77. doi:10.1002/ev.1434.

Casey, J. P. (1972) 'Reform of Collective Bargaining Law: Some Constitutional Implications', *Irish Jurist*, 7(1), pp. 1–16. Available at: http://www.jstor.org/stable/44026110.

Central Statistics Office (2025) 'The stock of Foreign Direct Investment (FDI) in Ireland was €1,300bn at the end of 2023', *Central Statistics Office*, 19 June. Available at: https://www.cso.ie/en/releasesandpublications/ep/p-fdi/foreigndirectinvestmentinireland2023/keyfindings/ (Accessed: 25 November 2025).

Charles, R. (1973) *The Development of Industrial Relations in Britain, 1911–1939, Studies in the Evolution of Collective Bargaining at National and Industry Level.* London and New York: Routledge.

Citizens Information (2025), Available at: https://www.citizensinformation.ie/en/government-in-ireland/elections-and-referenda/types-of-elections-and-referendums/constitutional-referendum-in-ireland/ (Accessed: 8 December 2025).

Clark, I. (2000) *Governance, the State, Regulation and Industrial Relations*. 1st edn. London and New York: Routledge.

Clegg, H.A. (1975) 'Pluralism in Industrial Relations'. *British Journal of Industrial Relations*, 13(3), pp. 309-316. doi:10.1111/j.1467-8543.1975.tb00613.x.

Clegg, H.A. (1976) *Trade Unionism under Collective Bargaining*. Oxford: Basil Blackwell.

Colling, T., and Terry, M. (2010) *Industrial Relations: Theory and Practice (Industrial Revolutions).* 3rd edn. Chichester: John Wiley & Sons.

Community Charter of the Fundamental Social Rights of Workers. Summary available at: https://eur-lex.europa.eu/EN/legal-content/summary/community-charter-of-fundamental-social-rights-of-workers.html

Cook v Carroll [1945] IR 515.

Crouch, C. (1994) *Industrial Relations and European State Traditions*. Oxford: Oxford University Press.

Cullinane, N., and Dobbins, A. (2014) 'Considering the Impact of the 'Right to Bargain' Legislation in Ireland: A Review', *Industrial Law Journal*, 43(1), pp. 52–83, doi:10.1093/indlaw/dwu002.

Cullinane, N., and Dundon, T. (2012) 'Unitarism and employer resistance to trade unionism', *The International Journal of Human Resource Management*, *25*(18), pp. 2573–2590. doi:10.1080/09585192.2012.667428.

Cunliffe, A.L., and Alcadipani, R. (2016) 'The Politics of Access in Fieldwork: Immersion, Backstage Dramas, and Deception: Immersion, Backstage Dramas, and Deception.' *Organizational Research Methods*, *19*(4), pp. 535-561. doi:10.1177/1094428116639134.

Curtin v Dáil Éireann, [2006] IESC 14.

Daniel, W.W., and McIntosh, N. (1972) *Right to manage*. London: MacDonald UK.

Darmody, J. (2025) 'Can Ireland keep up with the need for tech skills?', *Silicon Republic*, 20 February. Available at: https://www.siliconrepublic.com/careers/ireland-talent-skills-fdi-ida-upskiling (Accessed: 7 July 2025).

D'Art, D. (2020) 'Freedom of Association and Statutory Recognition; A Constitutional Impossibility?', *Irish Jurist*, 82, pp. 82-112. Available at: https://www.jstor.org/stable/27128221.

D'Art, D., and Turner, T., (2003) 'Union recognition in Ireland: one step forward or two steps back?', *Industrial Relations Journal*, 34(3), pp. 226-240. doi:10.1111/1468-2338.00270.

D'Art, D., and Turner, T. (2007) 'Trade Unions and Political Participation in the European Union: Still Providing a Democratic Dividend?', *British Journal of Industrial Relations*, 45(1), pp. 103-126. doi:10.1111/j.1467-8543.2007.00604.x.

D'Art, D., and Turner, T. (2011) 'Irish Trade Unions Under Social Partnership: A Faustian Bargain?', *Industrial Relations Journal*, 42(2), pp. 157-173. doi:10.1111/j.1468-2338.2011.00617.x.

Davies, A.C.L. (2004) *Perspectives on Labour Law*. 1st edn. Cambridge: Cambridge University Press.

Debates on the Trade Boards Bill, 1909. Available at: https://hansard.parliament.uk/lords/1909-08-30/debates/6eb672be-3fe5-4c04-a378-75999fd7c462/TradeBoardsBill (Accessed: 3 December 2024).

Demir and Baykara v Turkey [2008] ECHR 1345.

Demougin, P., Gooberman, L., Hauptmeier, M., Heery, E. (2021) 'Revisiting voluntarism: Private voluntary regulation by Employer Forums in the United Kingdom'. *Journal of Industrial Relations*, 63(5), pp. 684-705. doi:10.1177/00221856211038308.

Denzin, N.K. (1989) *Interpretive Interactionism. Applied Social Research Methods*. 1st edn., Thousand Oaks, CA: Sage Publications.

Department of Enterprise, Tourism and Employment (2021) 'High Level Working Group convened to review collective bargaining and the industrial relations landscape in Ireland', 30 March. Available at: https://enterprise.gov.ie/en/news-and-events/department-news/2021/march/30032021a.html (Accessed: 11 June 2023).

Department of Enterprise, Tourism and Employment (2022) 'Final Report of the LEEF High Level Working Group on Collective Bargaining', 5 October 2022. Available at: https://assets.gov.ie/static/documents/final-report-of-the-leef-high-level-working-group-on-collective-bargaining.pdf (Accessed: 18 May 2023).

Dickens, L., and Hall, M. (2003) 'Labour Law and Industrial Relations: A new Settlement?', in Edwards, P. (ed.) *Industrial Relations: Theory and Practice*. Oxford: Blackwell, pp. 124-156.

Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union. Available at: https://eur-lex.europa.eu/eli/dir/2022/2041/oj/eng (Accessed: 2 September 2025).

Dobbins, T. (2010) 'The case for 'beneficial constraints': Why permissive voluntarism impedes workplace cooperation in Ireland', *Economic and Industrial Democracy,* 31(4), pp. 497-519. doi:10.1177/0143831X10365572.

Dobbins, T., Cullinane, N., Sheehan, B. (2020), 'Ireland's conundrum on union bargaining rights: assessing the Industrial Relations Amendment Act 2015', *Industrial Relations Journal*, 51(1-2), pp. 75-91, doi:10.1111/irj.12281.

Doherty, M. (2007) 'Union sundown? The future of collective representation rights in Irish law', *Irish Employment Law Journal*, 4(4), pp. 1-18. Available at: https://ssrn.com/abstract=2062177.

Doherty M. (2008) 'Hard Law, Soft Edge? Information, Consultation and Partnership', *Employee Relations,* 30(6), pp. 603-622. doi:10.1108/01425450810910019.

Doherty, M. (2013) 'Emergency Exit? Collective Bargaining, the ILO and Irish Law', *European Labour Law Journal,* 4(3), pp. 171-195. doi:10.1177/201395251300400303.

Doherty, M. (2023) 'Gewerkschaftsmonitor Irland 2023', *Friedrich-Ebert-Stiftung*, July 2023. Available at: https://library.fes.de/pdf-files/id/gewerkschaftsmonitore/16302/2023-irland-dt.pdf (Accessed 25 July 2024).

Doolan, B. (2011) *Principles of Irish Law*. 8th edn. Dublin: Gill & Macmillan.

Drisko, J.W. (2024) 'Transferability and Generalization in Qualitative Research', *Research on Social Work Practice*, 35(1), pp. 102-110. doi:10.1177/10497315241256560.

Dublin Colleges ASA v City of Dublin VEC [1982] 1 J.I.S.L.L 73.

Duffy, K. (2010) 'The View of the Labour Court', in Kerr, A. (ed.), *The Industrial Relations Act 1990: Twenty Years On*. Dublin: Round Hall.

Duffy, K. (2019) ‘Trade unions and the collective bargaining conundrum. Where to next?’ *Industrial Relations News*, IRN 18, 16 May. Available at: https://www.irn.ie/article/24539.

Dukes, R. (2014) *The Labour Constitution: The Enduring Idea of Labour Law*. Oxford: Oxford University.

Dukes, R. (2015) ‘Wedderburn and the Theory of Labour Law: Building on Kahn-Freund’ *Industrial Law Journal*, 44(3), pp. 357–384. doi:10.1093/indlaw/dwv015.

Dundon, T., Cullinane, N., Hickland, E., Dobbins, T., Donaghey, J. (2017) ‘Triggering employee voice under the European Information and Consultation Directive: A non-union case study’, *Economic and Industrial Democracy*, 38(4), pp. 629-655. doi:10.1177/0143831X15584085.

Dunlop, J.T. (1958) *Industrial Relations Systems*. New York: Henry Holt and Company.

E. I. Co. Ltd. v Kennedy [1968] IR 69.

Edlin, D.E. (2016) *Common Law Judging: Subjectivity, Impartiality, and the Making of Law*. Michigan: University of Michigan Press. doi:10.3998/mpub.3783964.

Educational Company of Ireland v Fitzpatrick [1961] IR 345.

Ellem, B. (1999) ‘Analysing Documents’, in: Kelly, D. (ed.) *Researching Industrial Relations*. Sydney: The Federation Press, pp. 73-79.

Employment (Miscellaneous Provisions) Act, 2018. Available at: https://www.irishstatutebook.ie/eli/2018/act/38/enacted/en/html (Accessed: 19 January 2024).

Erne, R. (2025) ‘The EU Minimum Wage Directive: To Be or Not to Be?’, *Social Europe,* 24 February. Available at: https://www.socialeurope.eu/the-eu-minimum-wage-directive-to-be-or-not-to-be, (Accessed: 14 July 2025).

EU-Charter of Fundamental Rights of the European Union (2000/C 364/01). Available at: https://www.europarl.europa.eu/charter/pdf/text_en.pdf (Accessed: 24 October 2023).

EUR-Lex (2025) ‘Summary of: Directive (EU) 2022/2041 on adequate minimum wages in the European Union’. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:4623532 (Accessed: 12 July 2025).

European Commission (2024) ‘Europeans and their languages’, *European Commission*, 21 May. Available at: https://europa.eu/eurobarometer/surveys/detail/2979 (Accessed: 6 July 2025).

European Convention on Human Rights. Available at: https://eur-lex.europa.eu/EN/legal-content/glossary/european-convention-on-human-rights-echr.html (Accessed: 22 October 2023).

European Social Charter (revised) (ETS No. 163) (1996). Available at: https://rm.coe.int/168007cf93 (Accessed: 12 October 2023).

European Union 'Types of legislation'. Available at: https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en (Accessed: 12 July 2025).

Faulkner, M. (2018) *Essentials of Irish Labour Law.* 3rd edn. Dublin: Clarus Press.

Fifth and final report of the Royal Commission on Labour, Reports, Commissioners, etc. 1894, Vol XXXV, Cmnd 7421, para 298.

Flanders, A.D. (1970) *Management and unions: the theory and reform of industrial relations*. London: Faber and Faber.

Flanders, A.D. (1974), 'The Tradition of Voluntarism'. *British Journal of Industrial Relations*, 12(3), pp. 352-370. doi:10.1111/j.1467-8543.1974.tb00012.x.

Flanders, A, and Clegg, H.A (1954) *The System of Industrial Relations in Great Britain: Its History, Law, and Institutions*. Oxford: Basil Blackwell.

Flood, P.C., Turner, T., Willman, P. (1996) 'Union Presence, Union Service and Membership Participation', *British Journal of Industrial Relations*, 34(3), pp. 415-431. doi:10.1111/j.1467-8543.1996.tb00482.x.

Forde, M. (1991) *Industrial relations law*. Dublin: Round Hall Press.

Forsyth, A., Howe, J., Gahan, P., Landau, I. (2017) 'Establishing the right to bargain collectively in Australia and the UK: Are majority support determinations under Australia's Fair Work Act a more effective form of union recognition?', *Industrial Law Journal*, 46(3), pp. 335-365. doi:10.1093/indlaw/dww040.

Fox, A. (1966) 'Industrial Sociology and Industrial Relations', Research Paper 3, *Royal Commission on Trade Unions and Employers' Associations*, London: Her Majesty's Stationery Office.

Fox, A. (1973) 'Industrial Relations: A social critique of pluralist ideology', in Child, J. (ed) *Man and Organization*. London: Allen & Unwin, pp. 185-233.

Fox, A. (1974) *Beyond Contract: Work, Power and Trust Relations*. London: Faber & Faber.

Frazer, A. (1999) 'Researching Labour Law', in Kelly, D. (ed.), *Researching Industrial Relations*, 2nd edn., Annandale NSW, Federation Press, pp. 80-106.

Fulton, L. (2021) 'National Industrial Relations, an update (2019-2021)', *Labour Research Department and ETUI*. Brussels: ETUI. Available at: http://www.worker-participation.eu/National-Industrial-Relations.

G & T Crampton Ltd v Building & Allied Trades Union [1997] IEHC 174.

Geary, J., and Belizon, M. (2022) 'First findings from the UCD Working in Ireland Survey, 2021', College of Business, University College Dublin, 17 October. Available at: https://www.nerinstitute.net/blog/union-voice-ireland-evidence-ucd-working-ireland-survey.

German Constitutional Law, Grundgesetz, Available at: https://www.gesetze-im-internet.de/gg/BJNR000010949.html (Accessed: 19 February 2025).

Gibbons, T. (2015) 'The Industrial Relations (Amendment) Act 2001: A Useful Organising Tool for Irish Trade Unions or Last Refuge of the Powerless?', *Industrial Law Journal*, 44(3), pp. 472–477. doi:10.1093/indlaw/dwv017.

Godard, J. (2003) 'Do Labor Laws Matter? The Density Decline and Convergence Thesis Revisited', *Industrial Relations: A Journal of Economy and Society*, 42(3), pp. 458-492. doi:10.1111/1468-232X.00300.

Gompers, S. (1923) 'Remarks of Mr. Gompers to Newspaper Men in His Office', Reel 118, *The American Federation of Labor Records: The Samuel Gompers Era [1877-1937]*. George Meany Memorial AFL-CIO Archive, Special Collections, Hornbake Library, University of Maryland, College Park, MD. September 14, 2015.

Greenberg, J., Folger, R. (1983) 'Procedural Justice, Participation, and the Fair Process Effect in Groups and Organizations', in Paulus, P.B. (ed) *Basic Group Processes*. 1st edn. New York: Springer.

Gummesson, E. (1991) 'Qualitative Research in Management', *Qualitative Methods in Management Research*. Londres: Sage Publications. Available at: https://cv.uoc.edu/moduls/UW04_63030_00835/web/nwin/m1/m1_lec3.pdf

Gunnigle, P., Garavan, T.N., Morley, M., Collins, E. (2001) 'Human capital accumulation: the role of human resource development', *Journal of European Industrial Training*, 25(2/3/4), pp. 48-68. doi:10.1108/EUM0000000005437.

Gunnigle, P., Collings, D.G., Morley, M. (2005) 'Exploring the dynamics of industrial relations in US multinationals: evidence from the Republic of Ireland', *Industrial Relations Journal*, 36(3), pp. 241-256. doi:10.1111/j.1468-2338.2005.00356.x.

Gunnigle, P., Lavelle, J., McDonnell, A. (2007) 'Human Resource Practices in Multinational Companies in Ireland: A Large-Scale Survey (2007)'. Available at: http://dx.doi.org/10.2139/ssrn.1077266.

Gunnigle, P., Lavelle, J., McDonnell, A. (2009) 'Subtle but Deadly? Trade Union Avoidance through "Double Breasting" among Multinational Companies', *Advances in Industrial & Labor Relations*, 16, pp. 51-74. doi:10.1108/S0742-6186(2009)0000016006.

Gunnigle, P., McDonnell, A., Burgess, J., Lavelle, J., Monaghan, S. (2013) 'Weathering the storm? Multinational companies and human resource management through the global financial crisis', *International Journal of Manpower*, 34(3), pp. 214–231. doi:10.1108/IJM-04-2013-0078.

Gunnigle, P., Lavelle, J., Monaghan, S. (2019) 'Multinational Companies and HRM in Ireland During Recession: A Retrospective from a Highly Globalized Economy', *Thunderbird International Business Review*, 61(3), pp. 481-489. doi:10.1002/tie.21978.

H.A. O'Neil Limited v Unite the Union and others [2024] IESC 8.

Habermas, J. (1996, first published 1992) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Massachusetts: MIT Press.

Hall, P.A., and Soskice, D. (2001) *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. Oxford: Oxford University Press.

Heffer, E.S. (1973) *The class struggle in parliament: A socialist view of industrial relations*. London: Gollancz.

Herry, E., and Adler, L. (2004) 'Organizing the Unorganized', in Frege, C., and Kelly. J. (eds) *Varieties of Unionism: Strategies for Union Revitalization in a Globalizing Economy.* Oxford: Oxford University Press.

Hickland, E., and Dundon, T. (2016) 'The shifting contours of collective bargaining in the manufacturing sector in the Republic of Ireland: Government, employer and union responses since the economic crisis', *European Journal of Industrial Relations*, *22*(3), pp. 235-249. doi:10.1177/0959680116643208.

Higgins, G.G. (1944) *Voluntarism in Organized Labor in the United States, 1930-1940*. Washington D.C.: Catholic University Press.

Hogan, G.W., and Whyte, G.F. (2003) *J.M. Kelly: the Irish Constitution*. 4th edn. London: Butterworth Ireland.

Holgate, J., Simms, M., Tapia, M. (2018) 'The limitations of the theory and practice of mobilization in trade union organizing', *Economic and Industrial Democracy*, 39(4), pp. 599-616. doi:10.1177/0143831X18777608.

Hong, S.N. (1982) 'Industrial relations and voluntarism: the Hong Kong dilemma', *International labour review*, 121(6), pp. 747-759. Available at: https://researchrepository.ilo.org/esploro/outputs/journalArticle/Industrial-relations-and-voluntarism-the-Hong/995274505602676.

Horgan, J. (1987) 'The Future of Collective Bargaining', in *Industrial Relations in Ireland*, Dublin: University College Dublin.

Howell, C. (2005) *Trade Unions and the State: The Construction of Industrial Relations Institutions in Britain, 1890-2005*, Princeton: Princeton University.

Huczynski, A.A., and Buchanan, D.A. (2010) *Organisational Behaviour*. 7th edn., Harlow: Pearson Education Limited.

Hyman, R. (1975) *Industrial Relations: A Marxist Introduction Book*. London: Palgrave Macmillan.

IDA Ireland (2024) ‘Record R&D, strong capital investment, and high number of new investors, drive continued strong performance of FDI against intense global competition’, *IDA Ireland*, 17 December. Available at: https://www.idaireland.com/latest-news/press-release/record-r-d,-strong-capital-investment,-and-high-number-of-new-investors (Accessed: 7 July 2025).

IDA Ireland (2025) ‘Ireland’s Economy’. Available at: https://www.idaireland.com/why-companies-choose-ireland/ireland-s-economy (Accessed: 29 May 2025).

In re Article 26 and the Regulation of Information (Services outside the State for the Termination of Pregnancies) Bill 1995 [1995] 1 IR 1.

Industrial Council Report on the Enquiry into Industrial Agreements, Reports, Commissioners etc, 1913, Vol XXVIII, Cmnd 6952, para 11.

Industrial Relations Act, 1946, its Explanatory Memorandum and corresponding Parliamentary Debates. Available at: https://www.irishstatutebook.ie/eli/1946/act/26/enacted/en/html (Accessed: 26 May 2023).

Industrial Relations Act, 1969, its Explanatory Memorandum and corresponding Parliamentary Debates. Available at: https://www.irishstatutebook.ie/eli/1969/act/14/enacted/en/html (Accessed: 27 May 2023).

Industrial Relations Act, 1990, its Explanatory Memorandum and corresponding Parliamentary Debates. Available at: https://www.irishstatutebook.ie/eli/1990/act/19/enacted/en/html (Accessed: 3 July 2023).

Industrial Relations Act, 2001, its Explanatory Memorandum and corresponding Parliamentary Debates. Available at: https://www.irishstatutebook.ie/eli/2001/act/11/enacted/en/html (Accessed: 21 July 2023).

Industrial Relations Act, 2004, its Explanatory Memorandum and corresponding Parliamentary Debates. Available at: https://www.irishstatutebook.ie/eli/2004/act/4/enacted/en/html (Accessed: 21 July 2023).

Industrial Relations (Amendment) Act, 2015, its Explanatory Memorandum and corresponding Parliamentary Debates. Available at: https://www.irishstatutebook.ie/eli/2015/act/27/enacted/en/html (Accessed: 4 August 2023).

International Covenant on Civil and Political Rights, United Nations (1966). Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights (Accessed: 4 August 2023).

International Covenant on Economic, Social and Cultural Rights, United Nations (1966). Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights (Accessed: 3 December 2023).

International Labour Office (1978) ‘Collective Bargaining: A Workers Education Manual’, *International Labour Organization*, 11th impression, Geneva.

International Labour Office (2012) ‘Case No. 2780 (Ireland): Complaints against the Government of Ireland presented by ICTU‘, in *Reports of the Committee on Freedom of Association: 363rd Report of the Committee on Freedom of Association*, 313th Session, Geneva, 15–30 March, pp.207-231, paras 723-815. Available at: https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_176577.pdf (Accessed: 7 January 2024).

International Labour Organization (2025) ‘Collective bargaining’. Available at: https://www.ilo.org/topics-and-sectors/collective-bargaining-and-labour-relations (Accessed: 7 December 2025).

International Labour Organization (2025) ‘Collective bargaining’. Available at: https://libguides.ilo.org/collective-bargaining-en (Accessed: 9 December 2025).

Irish Congress of Trade Unions (2024) ‘Opening Statement to Oireachtas Joint Committee on Enterprise, Trade and Employment on the regulatory and legislative changes required for the transposition of the Adequate Minimum Wages Directive’, *ICTU 2024*, 24 January.

Kahn-Freund, O. (1970) ‘Trade Unions, the Law and Society’, *The Modern Law Review*, 33(3), pp. 241-267. doi:10.1111/j.1468-2230.1970.tb01270.x.

Kahn-Freund, O. (1977, first published 1972) *Labour and the Law*, 2nd edn., London: Stevens & Sons.

Kelly, D. (1999) ‘Methods and Methodology: The Problem of Industrial Relations’, in Kelly, D. (ed.). *Researching Industrial Relations*. Sydney: The Federation Press.

Kelsen, H. (1967) *Pure Theory of Law.* Berkeley, CA: University of California Press.

Kerr, T. (1991) ‘Irish Industrial Relations Legislation Consensus not Compulsion’, *Industrial Law Journal*, 20(4), pp. 240–257. doi:10.1093/ilj/20.4.240.

Kerr, A. (2015) *The Trade Union and Industrial Relations Acts of Ireland*. 5th edn. London: Sweet & Maxwell.

Kerr, A. (2017) ‘Industrial Relations Law', in Murphy, A., and Regan, M. (eds), *Employment Law*, 2nd edn., London: Bloomsbury.

King, M. (2006) *The demise of voluntarism in the Irish System of Industrial Relations.* Dublin: University of Dublin.

Lapan, S.D., Quartaroli, M.T., Riemer, F.J. (2012) *Qualitative research: An introduction to methods and designs.* Jossey-Bass/Wiley.

Laurentiu v Minister for Justice [1999] 4 IR 26.

Lavelle, J. (2008) 'Charting the contours of union recognition in foreign-owned MNCs: survey evidence from the Republic of Ireland', *Irish Journal Of Management*, 29(1), pp. 45-64. doi:10.48460/MU.MURAL.00020312.

Lavelle, J., Gunnigle, P., McDonnell, A. (2010) 'Patterning employee voice in multinational companies. *Human Relations*, 63(3), pp. 395-418. doi:10.1177/0018726709348935.

Lehndorff, S. (2012) 'Introduction – The triumph of failed ideas', in Lehndorff, S. (ed.) *A triumph of failed ideas: European models of capitalism in the crisis.* Brussels: ETUI, pp. 1-26.

Leventhal, G.S. (1976) 'What Should Be Done with Equity Theory? New Approaches to the Study of Fairness in Social Relationships', Available at: https://files.eric.ed.gov/fulltext/ED142463.pdf.

Lincoln, Y.S., Guba, E. (1985) *Naturalistic Inquiry.* London: Sage Publications.

Lind, E.A., and Tyler, T.R., (1988) *The Social Psychology of Procedural Justice.* New York: Springer.

Luhmann, N. (1968) *Vertrauen.* Stuttgart: F. Enke Verlag

Luhmann, N. (1969) *Legitimation durch Verfahren.* Neuwied: Hermann Luchterhand Verlag.

Luhmann, N. (2017, first published in 1973) *Trust and Power.* Cambridge: Polity Press.

Lynch, I. (1998) 'Lawyers and Unions; The Right of Freedom of Association in the Irish Constitution', in Murphy, T., and Twomey, P. (eds) *Ireland's Evolving Constitution 1937-97: Collected Essays*. Oxford: Hart Publishing.

Maccarrone, V., and Erne, R. (2023) 'Ireland: Trade unions recovering after being tipped off balance by the Great Recession?' in Waddington, J., Müller, T., Vandaele, K. (eds.) *Trade unions in the European Union Picking up the pieces of the neoliberal challenge*. Brussels: ETUI, Peter Lang Publishers, pp. 585-624.

Mayring, P. (2007) 'On Generalization in Qualitatively Oriented Research', *Forum: Qualitative Social Research*, 8(3). doi:10.17169/fqs-8.3.291.

McAlevey, J.F. (2016) *No Shortcuts: Organizing for Power in the New Gilded Age*. Oxford: Oxford University Press.

McBride, J. (2005) *Freedom of Association, The Essentials of Human Rights*. London: Hodder Arnold.

McCann FitzGerald LLP (2020) 'Sectoral Employment Orders Declared Unconstitutional', McCann FitzGerald LLP, 28 July. Available at: https://www.mccannfitzgerald.com/knowledge/employment/sectoral-employment-orders-declared-unconstitutional (Accessed: 3 April 2022).

McDonough, T., and Dundon, T. (2010) 'Thatcherism delayed? The Irish crisis and the paradox of social partnership', *Industrial Relations Journal*, 41(6), pp. 544-562. doi:10.1111/j.1468-2338.2010.00585.x.

McGee v A.G. & Anor [1973] IESC 2; [1974] IR 284.

Miall, E. (1845) *Views of the Voluntary Principle*. London: Aylott and Jones.

Morgan, G. (2006). *Images of Organization.* Updated edn. Thousand Oaks, CA: Sage Publications.

Naisiúnta Léictreach Contraitheoir Éireann Coideachta Faoi Theorainn Ráthaoichta v The Labour Court, The Minister for Business, Enterprise and Innovation, Ireland and the Attorney General [2021] IESC 36.

Nolan Transport (Oaklands) Ltd. v Halligan [1998] IESC 5.

Organisation of Working Time Act, 1997. Available at: https://www.irishstatutebook.ie/eli/1997/act/20/enacted/en/html (Accessed: 8 September 2022).

O'Sullivan, M., and Gunnigle, P. (2009) '"Bearing All the Hallmarks of Oppression": Union Avoidance in Europe's Largest Low-cost Airline, *Labor Studies Journal*, 34(2), pp. 252-270. doi:10.1177/0160449X08319661.

O'Sullivan, M., Turner, T., Kennedy, M., Wallace, J. (2015) 'Is Individual Employment Law Displacing the Role of Trade Unions?', *Industrial Law Journal*, 44(2), pp. 222–245. doi:10.1093/indlaw/dwv010.

Patton, M.Q. (1999) 'Enhancing the Quality and Credibility of Qualitative Analysis', *Health Services Research*, 34, pp. 1189-1208. Available at: https://pmc.ncbi.nlm.nih.gov/articles/PMC1089059/.

Prendergast, A. (2025) 'Ibec puts emphasis on training funds for collective bargaining', *Industrial Relations News*, IRN 20, 22 May. Available at: https://www.irn.ie/article/31911 (Accessed: 1 August 2025)

Protection of Employees (Part-Time Work) Act, 2001. Available at: https://revisedacts.lawreform.ie/eli/2001/act/45/front/revised/en/html (Accessed: 6 April 2022).

Rabbitte, P., and Gilmore, E. (1990) Berties Bill. Dublin: The Workers' Party. Available at: https://www.leftarchive.ie/document/view/2542/ (Accessed: 4 March 2023)

Raimond, P. (1993). *Management Projects*. London: Chapman & Hall.

Rawls, J. (1971) *A Theory of Justice: Original Edition*. Harvard: Harvard University Press.

Reed, L.S. (1930) *The Labor Philosophy of Samuel Gompers.* New York: Columbia University Press.

Rios-Morales, R., and Brennan, L. (2009) 'Ireland's innovative governmental policies promoting internationalisation', *Research in International Business and Finance*, 23(2), pp. 157-168, doi:10.1016/j.ribaf.2008.03.012.

Roche, W.K. (2001) 'Accounting for the trend in trade union recognition in Ireland', *Industrial Relations Journal*, 32(1), pp. 37-54. doi:10.1111/1468-2338.00182.

Rogin, M. (1962) 'Voluntarism: The Political Functions of an Antipolitical Doctrine', *ILR Review*, 15(4), pp. 521-535. doi:10.1177/001979396201500405.

Röhl, K.F., and Machura, S. (2018) *Procedural Justice*. London and New York: Routledge.

Royal Commission on Trade Unions and Employers' Associations 1965-1968 (Command Paper No. 3623). Available at: https://hansard.parliament.uk/commons/1968-07-16/debates/eba30033-c970-415e-92b2-0206d0bfa93d/RoyalCommissionOnTradeUnionsAndEmployersAssociations(Report) (Accessed: 28 November 2021).

Ryanair v The Labour Court [2007] IESC 6.

Salamon, M. (2000) *Industrial Relations: Theory and Practice*. 4th edn., Harlow: Pearson Education/Prentice Hall.

Saunders, M.N.K., Lewis, P., Thornhill, A. (2019) *Research Methods for Business Students*. 8th edn., Harlow: Pearson Education.

Schiek, D. (2010) 'Europe's Socio-Economic Constitution ("Verfasstheit") after the Treaty of Lisbon', in Dieterich, T., Le Friant, M., Nogler, L., Kezuka, K., Pfarr, H. (eds) *Individuelle und kollektive Freiheit im Arbeitsrecht – Gedächtnisschrift für Ulrich Zachert*. Baden-Baden: Nomos.

Services Industrial Professional Technical Union (SIPTU) v Freshways Food Company [2016] LCR 21242.

Sinnott v Minister for Education [2001] IESC 63.

Sinzheimer, H. (1936) 'Eine Theorie des Sozialen Rechts', *Zeitschrift für Öffentliches Recht,* XVI (1), p. 31-57. Available at: https://www.sinzheimer.net/_downloads/7dbcdaa9180ae1e2e1f7a5d7c92b2809.

Sorrell, G.H. (1969) 'The Role of Law in an Industrial Relations System. *Journal of Industrial Relations*, 11(1), pp. 7-16. doi:10.1177/002218566901100102.

Suddaby, R. (2006) 'From the editors: What grounded theory is not', *Academy of Management Journal*, 49(4), pp. 633–642. doi:10.5465/amj.2006.22083020.

Teague, P. (2005) 'What is Enterprise Partnership?' *Organization*, 12(4), pp. 567-589. doi:10.1177/1350508405052759.

Teague, P. (2009) 'Path Dependency and Comparative Industrial Relations: The Case of Conflict Resolution Systems in Ireland and Sweden', *British Journal of Industrial Relations*, 2009, 47(3), pp. 499-520. doi:10.1111/j.1467-8543.2009.00714.x.

Teague, P., and Donaghey, J. (2009) 'Why has Irish Social Partnership Survived?', *British Journal of Industrial Relations*, 47(1), pp. 55-78. doi:10.1111/j.1467-8543.2008.00706.x.

Teague, P., and Thomas, D. (2008) *Employment Dispute Resolution and Standard Setting in the Republic of Ireland*. Dublin: Oak Tree Press.

Temporary Agency Work Act, 2012. Available at: https://www.irishstatutebook.ie/eli/2012/act/13/enacted/en/html (Accessed: 5 June 2022).

The Constitution Review Group (1996), *Report of the Constitution Review Group*, Dublin: Stationery Office. Available at: https://web.archive.org/web/20110721123125/http://www.constitution.ie/reports/crg.pdf (Accessed: 7 January 2022).

The Irish Constitution, Bunreacht na hÉireann, 1937. Available at: *https://www.irishstatutebook.ie/eli/cons/en/html* (Accessed: 9 July 2024).

The Labour Court (2023) 'The Labour Court Annual Report 2023'. Available at: https://www.labourcourt.ie/en/publications/annual-reports/2023/labour-court-annual-report-2023-english.pdf (Accessed: 4 November 2024).

The Labour Relations Commission (1981) 'History of the Labour Relations Commission'. Available at: https://www.lrc.ie/document/History_of_the_LRC_Page_1/6/219.htm (Accessed: 7 October 2021).

The State (Quinn) v Ryan [1965] IR 70.

Thibaut, J.W., and Walker, L. (1975) *Procedural Justice: A Psychological Analysis.* Hillsdale: L. Erlbaum Associates.

Treaty on European Union (TEU), C 326/13. Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF (Accessed: 16 July 2024).

Treaty on the Functioning of the European Union (TFEU), C 326/47. Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF (Accessed: 20 July 2024).

Trochim, R. (2006) 'External validity', in Trochim, R. (ed.) *Web center for social research methods, research knowledge base*. Available at: https://socialresearchmethods.net/kb/external.php (Accessed: 6 October 2025).

Tschentscher, A. (2018) 'The Function of Procedural Justice in Theories of Justice', in Röhl, K.F., Machura, S. (eds.) *Procedural Justice*. London and New York: Routledge. pp. 105-119.

Tyler, T.R., and Degoey, P. (1995) 'Collective Restraint in Social Dilemmas: Procedural Justice and Social Identification Effects on Support for Authorities', *Journal of Personality and Social Psychology*, 69(3), pp. 482-497. doi:10.1037/0022-3514.69.3.482.

Unfair Dismissals Act, 1977. Available at: https://www.irishstatutebook.ie/eli/1977/act/10/enacted/en/html (Accessed: 14 March 2022).

Varadkar, L. TD (2021) in 'High Level Working Group convened to review collective bargaining and the industrial relations landscape in Ireland', *Department of Enterprise, Tourism and Employment*, 30th March. Available at: https://enterprise.gov.ie/en/news-and-events/department-news/2021/march/30032021a.html (Accessed: 12 July 2025).

von Prondzynski, F. (1987) *Freedom of Association and Industrial Relations: A Comparative Study*. London and New York: Mansell Publishing.

von Prondzynski, F. (1998) 'Ireland: Corporatism Revived', in Ferner, A., and Hyman, R. (eds.) *Changing Industrial Relations in Europa*. Oxford: Blackwell.

von Prondzynski, F., and McCarthy, C. (1984) *Employment Law*. London: Sweet & Maxwell.

Wall, M. (2016) 'Government announces forum for dialogue between unions, employers', *The Irish Times*, 19 July. Available at: https://www.irishtimes.com/news/ireland/irish-news/government-announces-forum-for-dialogue-between-unions-employers-1.2727515 (Accessed: 7 February 2025).

Wallace, J. (1991) 'The Industrial Relations Act 1990 and Other Developments in Labour Law', Limerick: paper presented to the Mid-West Chapter of the Institute of Personnel Management, University of Limerick.

Wallace, J., Gunnigle, P., McMahon, G., O'Sullivan, M. (2013) *Industrial Relations in Ireland*. 4th edn., Dublin: Gill & Macmillan.

Wallace, J., Gunnigle, P., O'Sullivan, M., (2020) *Industrial Relations in Ireland*. 5th edn., Dublin: Institute of Public Administration.

Walsh, F. (2018) 'Trade Union density in Ireland since 2003: what do the statistics tell us?', Industrial Relations News, IRN 27, 12 July. Available at: https://www.irn.ie/article/23509 (Accessed: 14 October 2021).

Webb, S., and Webb, B. (1894) *The History of Trade Unionism*. London: Longmans, Green and Co.

Webb, S., and Webb, B. (1897) *Industrial Democracy*. London: Longmans, Green and Co.

Webb, S., and Webb, B. (1920) *The History of Trade Unionism*. London: Longmans, Green and Co.

Weber, M. (1947) *The Theory of Social and Economic Organizations*. New York: Oxford University Press.

Wedderburn, L. (1986) *The Worker and the Law*. 3rd edn. Harmondsworth: Penguin.

White, P. J. (1978) ‘Is voluntarism in decline?’, *Industrial relations journal*, 9(3), pp. 34-43. doi:10.1111/j.1468-2338.1978.tb00596.x.

Whitfield, K., and Strauss, G. (2008) ‘Changing Traditions in Industrial Relations Research’, in Blyton, P., Bacon, N., Fiorito, J., Heery, E. (eds.) *The Sage Handbook of Industrial Relations*. London: Sage Publications.

Wilson and National Union of Journalists, Palmer and NURMTW, Doolan and others v United Kingdom [2002] ECHR 552.

Wood, S., and Goddard, J. (1999) ‘The Statutory Union Recognition Procedure in the Employment Relations Bill: A Comparative Analysis’, *British Journal of Industrial Relations*, 37(2), pp. 203-245. doi:10.1111/1467-8543.00125.

Workplace Relations Act, 2015. Available at: https://www.irishstatutebook.ie/eli/2015/act/16/enacted/en/html (Accessed: 9 March 2022).

Workplace Relations Commission (2020) ‘Employment Regulation Orders’. Available at: https://www.workplacerelations.ie/en/what_you_should_know/hours-and-wages/employment%20regulation%20orders/ (Accessed: 17 July 2024).

Appendices

Appendix A:

EU Minimum Wage Directive

Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union

DIRECTIVES

DIRECTIVE (EU) 2022/2041 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 October 2022

on adequate minimum wages in the European Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153(2), point (b), in conjunction with Article 153(1), point (b), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) Pursuant to Article 3 of the Treaty on European Union (TEU), the aims of the Union are, inter alia, to promote the well-being of its peoples and to work for the sustainable development of Europe based on a highly competitive social market economy, aiming to ensure full employment and social progress, a high level of protection and improvement of the quality of the environment, while promoting social justice and equality between women and men. Pursuant to Article 9 of the Treaty on the Functioning of the European Union (TFEU), the Union is to take into account, inter alia, requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, and the fight against social exclusion.

(2) Article 151 TFEU provides that the Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter (ESC), have as their objectives, inter alia, the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection and dialogue between management and labour.

(3) Article 31 of the Charter of Fundamental Rights of the European Union ([4]) (the 'Charter') provides for the right of every worker to working conditions which respect his or her health, safety and dignity. Article 27 of the Charter provides for the right of workers to information and consultation. Article 28 of the Charter provides for the right of workers and employers, or their respective organisations, in accordance with Union law and national laws and practices, to negotiate and conclude collective agreements at the appropriate levels. Article 23 of the Charter provides for the right to equality between women and men in all areas, including employment, work and pay.

(4) The ESC establishes that all workers have the right to just conditions of work. It recognises the right of all workers to a fair remuneration sufficient for a decent standard of living for themselves and their families. It also recognises the role of freely concluded collective agreements, as well as of statutory minimum wage-setting mechanisms, to ensure the effective exercise of this right, the right of all workers and employers to organise in local, national and international organisations for the protection of their economic and social interests and the right to bargain collectively.

([1]) Opinion of 25 March 2021 (OJ C 220, 9.6.2021, p. 106).
([2]) Opinion of 19 March 2021 (OJ C 175, 7.5.2021, p. 89).
([3]) Position of the European Parliament of 14 September 2022 (not yet published in the Official Journal) and decision of the Council of 4 October 2022.
([4]) OJ C 326, 26.10.2012, p. 391.

(5) Chapter II of the European Pillar of Social Rights (the 'Pillar'), proclaimed at Gothenburg on 17 November 2017, establishes a set of principles to serve as a guide towards ensuring fair working conditions. Principle No 6 of the Pillar reaffirms workers' right to fair wages that provide for a decent standard of living. It also provides that adequate minimum wages are to be ensured, in a way that provides for the satisfaction of the needs of the worker and his or her family in light of national economic and social conditions, while safeguarding access to employment and incentives to seek work. Furthermore, it recalls that in-work poverty is to be prevented and that all wages are to be set in a transparent and predictable way, according to national practices and respecting the autonomy of the social partners. Principle No 8 of the Pillar provides that the social partners are to be consulted on the design and implementation of economic, employment and social policies according to national practices and that they are to be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action.

(6) Guideline 5 in the annex to Council Decision (EU) 2020/1512 ([5]) calls on Member States that have in place national mechanisms for the setting of statutory minimum wages to ensure an effective involvement of social partners in wage-setting, providing for fair wages that enable a decent standard of living, while paying particular attention to lower and middle income groups with a view to upward convergence. That Guideline also calls on Member States to promote social dialogue and collective bargaining with a view to wage-setting. It also calls on Member States and the social partners to ensure that all workers have adequate and fair wages by benefitting from collective agreements or adequate statutory minimum wages, and taking into account their impact on competitiveness, job creation and in-work poverty, while respecting national practices. The Commission communication of 17 September 2020 entitled 'Annual Sustainable Growth Strategy 2021' states that Member States should adopt measures to ensure fair working conditions. Moreover, the Commission communication of 17 December 2019 entitled 'Annual Sustainable Growth Strategy 2020' recalled that, in the context of growing social divides, it is important to ensure that each worker earns a fair wage. Country-specific recommendations have been issued to a number of Member States in the field of minimum wages with the aim of improving the setting and updating of minimum wages.

(7) Better living and working conditions, including through adequate minimum wages, benefit workers and businesses in the Union as well as society and the economy in general and are a prerequisite for achieving fair, inclusive and sustainable growth. Addressing large differences in the coverage and adequacy of minimum wage protection contributes to improving the fairness of the Union's labour market, to preventing and reducing wage and social inequalities, and to promoting economic and social progress and upward convergence. Competition in the internal market should be based on high social standards, including a high level of worker protection and the creation of quality jobs, as well as on innovation and improvements in productivity, while ensuring a level playing field.

(8) When set at adequate levels, minimum wages, as provided for in national law or collective agreements, protect the income of workers, in particular of disadvantaged workers, help ensure a decent living, as pursued by International Labour Organization (ILO) Minimum Wage Fixing Convention No 131 (1970). Minimum wages that provide for a decent standard of living and thus meet a threshold of decency can contribute to the reduction of poverty at national level and to sustaining domestic demand and purchasing power, strengthen incentives to work, reduce wage inequalities, the gender pay gap and in-work poverty, and limit the fall in income during economic downturns.

(9) In-work poverty in the Union has increased over the past decade and more workers are experiencing poverty. During economic downturns, the role of adequate minimum wages in protecting low-wage workers is particularly important, as they are more vulnerable to the consequences of such downturns, and is essential for the purpose of supporting a sustainable and inclusive economic recovery, which should lead to an increase in quality employment. To ensure sustainable recovery, it is vital that businesses, in particular microenterprises and small enterprises, thrive. In view of the effects of the COVID-19 pandemic, it is important to assess the adequacy of wages in low-paid sectors that have proven to be essential and of great social value during the crisis.

([5]) Council Decision (EU) 2020/1512 of 13 October 2020 on guidelines for the employment policies of the Member States (OJ L 344, 19.10.2020, p. 22).

(10) Women, younger workers, migrant workers, single parents, low-skilled workers, persons with disabilities, and in particular persons who suffer from multiple forms of discrimination, still have a higher probability of being minimum wage or low wage earners than other groups. Given the over-representation of women in low-paid jobs, improving the adequacy of minimum wages contributes to gender equality, closing the gender pay and pension gap, as well as elevating women and their families out of poverty, and contributes to sustainable economic growth in the Union.

(11) The crisis caused by the COVID-19 pandemic is having a significant impact on the services sector, microenterprises and small enterprises, which have a high share of low-wage and minimum-wage earners. Minimum wages are therefore also important in view of the structural trends that are reshaping labour markets and which are increasingly characterised by high shares of precarious and non-standard forms of work, often including part-time, seasonal, platform and temporary agency workers. Those trends have led, in many cases, to an increased job polarisation resulting in an increasing share of low-paid and low-skilled occupations and sectors in most Member States, as well as to higher wage inequality in some of them. It is more difficult for workers with non-standard contracts to organise and negotiate for collective agreements.

(12) While minimum wage protection exists in all Member States, in some that protection stems from legislative or administrative provisions and from collective agreements while in others it is provided exclusively through collective agreements. The different national traditions in the Member States should be respected.

(13) Minimum wage protection provided for in collective agreements in low-paid occupations is adequate and therefore provides a decent standard of living in most cases, and has proven to be an effective means by which to reduce in-work poverty. In several Member States, statutory minimum wages are usually low compared to other wages in the economy. In 2018, the statutory minimum wage did not provide sufficient income for a single minimum-wage earner to reach the at-risk-of-poverty threshold in nine Member States.

(14) Not all workers in the Union are effectively protected by minimum wages, as in some Member States some workers, even though they are covered, receive a lower remuneration than the statutory minimum wage in practice, due to non-compliance with existing rules. Such non-compliance has been found to affect, in particular, women, young workers, low-skilled workers, migrant workers, single parents, persons with disabilities, workers in non-standard forms of employment such as temporary workers and part-time workers, and agricultural and hospitality workers, which as a consequence drives down wages. In Member States where minimum wage protection is provided for in collective agreements alone, the share of workers not covered is estimated to vary from 2 % to 55 % of all workers.

(15) The United Nations' Convention on the Rights of Persons with Disabilities requires that workers with disabilities, including those in sheltered employment, receive equal remuneration for work of equal value. That principle is also relevant with regard to minimum wage protection.

(16) While strong collective bargaining, in particular at sector or cross-industry level, contributes to ensuring adequate minimum wage protection, traditional collective bargaining structures have been eroding during recent decades, due, inter alia, to structural shifts in the economy towards less unionised sectors and to the decline in trade union membership, in particular as a consequence of union-busting practices and the increase of precarious and non-standard forms of work. In addition, sectoral and cross-industry level collective bargaining came under pressure in some Member States in the aftermath of the 2008 financial crisis. However, sectoral and cross-industry level collective bargaining is an essential factor for achieving adequate minimum wage protection and therefore needs to be promoted and strengthened.

(17) The Commission has consulted management and labour in a two-stage process with regard to possible action to address the challenges related to adequate minimum wage protection in the Union, in accordance with Article 154 TFEU. There was no agreement among the social partners to enter into negotiations with regard to those matters. It is, however, important to take action at Union level, while respecting the principle of subsidiarity, to improve living and working conditions in the Union, in particular the adequacy of minimum wages, taking into account the outcomes of the consultation of the social partners.

(18) With a view to improving living and working conditions as well as upward social convergence in the Union, this Directive establishes minimum requirements at Union level and sets out procedural obligations for the adequacy of statutory minimum wages, and enhances effective access of workers to minimum wage protection, in the form of a statutory minimum wage where it exists, or provided for in collective agreements as defined for the purposes of this Directive. This Directive also promotes collective bargaining on wage-setting.

(19) In accordance with Article 153(5) TFEU, this Directive neither aims to harmonise the level of minimum wages across the Union nor does it aim to establish a uniform mechanism for setting minimum wages. It does not interfere with the freedom of Member States to set statutory minimum wages or to promote access to minimum wage protection provided for in collective agreements, in accordance with national law and practice and the specificities of each Member State and in full respect for national competences and the social partners' right to conclude agreements. This Directive does not impose and should not be construed as imposing an obligation on the Member States where wage formation is ensured exclusively via collective agreements to introduce a statutory minimum wage or to declare collective agreements universally applicable. Moreover, this Directive does not establish the level of pay, which falls within the right of the social partners to conclude agreements at national level and within the relevant competence of Member States.

(20) This Directive takes into account that, in accordance with ILO Maritime Labour Convention (2006) ([6]), as amended, Member States who ratified that Convention are, after consulting representative ship-owners' and seafarers' organisations, to establish procedures for determining minimum wages for seafarers. Representative ship-owners' and seafarers' organisations are to participate in such procedures. In light of their specific nature, the acts of Member States resulting from such procedures should not be subject to the rules on statutory minimum wages set out in Chapter II of this Directive. Such acts should not interfere with free collective bargaining between ship-owners or their organisations and seafarers' organisations.

(21) While complying with Regulation (EC) No 593/2008 of the European Parliament and of the Council ([7]), this Directive should apply to workers who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, with consideration to the criteria established by the Court of Justice of the European Union (Court of Justice) for determining the status of a worker. Provided that they fulfil those criteria, workers in both the private and the public sectors, as well as domestic workers, on-demand workers, intermittent workers, voucher-based workers, platform workers, trainees, apprentices and other non-standard workers, as well as bogus self-employed and undeclared workers could fall within the scope of this Directive. Genuinely self-employed persons do not fall within the scope of this Directive since they do not fulfil those criteria. The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. Bogus self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. Such persons should fall within the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship.

(22) Well-functioning collective bargaining on wage-setting is an important means by which to ensure that workers are protected by adequate minimum wages that therefore provide for a decent standard of living. In the Member States with statutory minimum wages, collective bargaining supports general wage developments and therefore contributes to improving the adequacy of minimum wages as well as the living and working conditions of workers. In the Member States where minimum wage protection is provided for exclusively by collective bargaining, their level as well as the share of protected workers are directly determined by the functioning of the collective bargaining system and the collective bargaining coverage. 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.

([6]) Council Decision 2007/431/EC of 7 June 2007 authorising Member States to ratify, in the interests of the European Community, the Maritime Labour Convention, 2006, of the International Labour Organisation (OJ L 161, 22.6.2007, p. 63).

([7]) Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

(23) Minimum wage protection through collective agreements is beneficial to workers and employers as well as businesses. In some Member States there are no statutory minimum wages. In those Member States, wages, including minimum wage protection, are provided for exclusively by collective bargaining between the social partners. Average wages in those Member States are among the highest in the Union. Those systems are characterised by very high collective bargaining coverage as well as high levels of affiliation to both the employer associations and trade unions. Minimum wages that are provided for in collective agreements that have been declared universally applicable without any discretion of the declaring authority as to the content of the applicable provisions should not be considered to be statutory minimum wages.

(24) In a context of declining collective bargaining coverage, 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 for in collective agreements to improve workers' minimum wage protection. Member States have ratified ILO Freedom of Association and Protection of the Right to Organise Convention No 87 (1948) and ILO Right to Organise and Collective Bargaining Convention No 98 (1949). The right to bargain collectively is recognised under those ILO conventions, under ILO Labour Relations (Public Services) Convention No 151 (1978) and ILO Collective Bargaining Convention No 154 (1981), as well as under the Convention for the Protection of Human Rights and Fundamental Freedoms and the ESC. Articles 12 and 28 of the Charter guarantee, respectively, the freedom of assembly and association and the right of collective bargaining and action. According to its preamble, the Charter reaffirms those rights as they result, in particular, from the Convention on the Protection of Human Rights and Fundamental Freedoms and the Social Charters adopted by the Union and by the Council of Europe. Member States should take, as appropriate and in accordance with national law and practice, measures promoting collective bargaining on wage-setting. Such measures might include, among others, measures easing the access of trade union representatives to workers.

(25) Member States with a high collective bargaining coverage tend to have a small share of low-wage workers and high minimum wages. Member States with a small share of low-wage earners have a collective bargaining coverage rate above 80 %. Similarly, the majority of the Member States with high levels of minimum wages relative to the average wage have a collective bargaining coverage above 80 %. Therefore, each Member State with a collective bargaining coverage rate below 80 % should adopt measures with a view to enhancing such collective bargaining. Each Member State with a collective bargaining coverage below a threshold of 80 % should provide a framework of enabling conditions for collective bargaining, and establish an action plan to promote collective bargaining to progressively increase the collective bargaining coverage rate. In order to respect the autonomy of the social partners, which includes their right to collective bargaining and excludes any obligation to conclude collective agreements, the threshold of 80 % of collective bargaining coverage should only be construed as an indicator triggering the obligation to establish an action plan.

The action plan should be reviewed on a regular basis, at least every five years, and, if needed, revised. The action plan and any update thereof should be notified to the Commission and be made public. Each Member State should be able to decide on the appropriate form of its action plan. An action plan that a Member State has adopted before the entry into force of this Directive may be considered to be an action plan under this Directive provided that it contains actions to effectively promote collective bargaining and fulfils the obligations under this Directive. Each Member State should establish such an action plan after consulting the social partners or by agreement with them, or, following a joint request by the social partners, as agreed between them. Member States' collective bargaining coverage rates vary significantly owing to a number of factors, including national tradition and practice as well as historic context. This should be taken into account when analysing progress towards a higher collective bargaining coverage, particularly with regard to the action plan provided for in this Directive.

(26) Sound rules, procedures and effective practices for setting and updating statutory minimum wages are necessary to deliver adequate minimum wages, while safeguarding existing and creating new employment opportunities, a level playing field and the competitiveness of firms including microenterprises, small enterprises and medium-sized enterprises (SMEs). Those rules, procedures and practices include a number of components to contribute to the adequacy of statutory minimum wages, including criteria to guide Member States in setting and updating statutory minimum wages and indicators to assess their adequacy, regular and timely updates, the existence of consultative bodies and the involvement of the social partners. A timely and effective involvement of the latter in the setting and updating of statutory minimum wages as well as in the establishment or modification of automatic indexation mechanisms, where they exist, is another element of good governance that allows for an informed and inclusive

decision-making process. Member States should provide the social partners with relevant information on statutory minimum wage-setting and updating. Giving the social partners the possibility to provide opinions, and to receive a reasoned response to opinions expressed prior to the presentation of proposals, on statutory minimum wage-setting and updating and before any decisions are taken could contribute to the proper involvement of the social partners in that process.

(27) Member States which use an automatic indexation mechanism, including semi-automatic mechanisms in which a minimal obligatory increase of statutory minimum wage is at least guaranteed, should also carry out the procedures for updating the statutory minimum wages, at least every four years. Those regular updates should consist of an evaluation of the minimum wage taking into account the guiding criteria, followed, if necessary, by a modification of the amount. The frequency of the automatic indexation adjustments on the one hand, and the updates of the statutory minimum wages on the other might differ. Member States where automatic or semi-automatic indexation mechanisms do not exist should update their statutory minimum wage at least every two years.

(28) Minimum wages are considered to be adequate if they are fair in relation to the wage distribution in the relevant Member State and if they provide a decent standard of living for workers based on a full-time employment relationship. The adequacy of statutory minimum wages is determined and assessed by each Member State in view of its national socioeconomic conditions, including employment growth, competitiveness and regional and sectoral developments. For the purpose of that determination, Member States should take into account purchasing power, long-term national productivity levels and developments, as well as wage levels wage distribution and wage growth.

Among other instruments, a basket of goods and services at real prices established at national level can be instrumental to determining the cost of living with the aim of achieving a decent standard of living. In addition to material necessities such as food, clothing and housing, the need to participate in cultural, educational and social activities could also be taken into consideration. It is appropriate to consider the setting and updating of statutory minimum wages separately from income support mechanisms. Member States should use indicators and associated reference values to guide their assessment of statutory minimum wage adequacy. The Member States might choose among indicators commonly used at international level and/or indicators used at national level. The assessment might be based on reference values commonly used at international level such as the ratio of the gross minimum wage to 60 % of the gross median wage and the ratio of the gross minimum wage to 50 % of the gross average wage, which are currently not met by all Member States, or the ratio of the net minimum wage to 50 % or 60 % of the net average wage. The assessment might also be based on reference values associated to indicators used at national level, such as the comparison of the net minimum wage with the poverty threshold and the purchasing power of minimum wages.

(29) Without prejudice to the competence of Member States to set the statutory minimum wage and to allow for variations and deductions, it is important to avoid variations and deductions being used widely, as they risk having a negative impact on the adequacy of minimum wages. It should be ensured that variations and deductions respect the principles of non-discrimination and proportionality. Variations and deductions should therefore pursue a legitimate aim. Examples of such deductions might be the recovery of overstated amounts paid or deductions ordered by a judicial or administrative authority. Other deductions, such as those related to the equipment necessary to perform a job or deductions of allowances in kind, such as accommodation, present a high risk of being disproportionate. Moreover, nothing in this Directive should be construed as imposing an obligation on Member States to introduce any variations of or deductions from minimum wages.

(30) An effective enforcement system, including reliable monitoring, controls and field inspections, is necessary to ensure the functioning of and compliance with national statutory minimum wage frameworks. To strengthen the effectiveness of enforcement authorities, close cooperation with the social partners is also needed, including to address critical challenges such as those related to abusive sub-contracting, bogus self-employment, non-recorded overtime or health and safety risks linked to an increase in work intensity. The capabilities of enforcement authorities should also be developed, in particular through training and guidance. Routine and unannounced visits, judicial and administrative proceedings and penalties in the case of infringements are important means by which to dissuade employers from effecting infringements.

(31) The effective implementation of minimum wage protection set out by legal provisions or provided for in collective agreements is essential in the awarding and the performance of public procurement and concession contracts. Non-respect for collective agreements providing for minimum wage protection may indeed occur in the execution of such contracts or in the sub-contracting chain thereafter, resulting in workers being paid less than the wage level agreed in the sectoral collective agreements. To prevent such situations, in accordance with Articles 30(3) and 42(1) of Directive 2014/23/EU ([8]), Articles 18(2) and 71(1) of Directive 2014/24/EU ([9]) and Articles 36(2) and 88(1) of Directive 2014/25/EU ([10]), of the European Parliament and the Council, public procurement contracting authorities and contracting entities are to take appropriate measures, including the possibility to introduce contract performance conditions, and ensure that economic operators apply to their workers the wages provided for in collective agreements for the relevant sector and geographical area and respect the rights of workers and trade unions arising from ILO Freedom of Association and the Protection of the Right to Organise Convention No 87 (1948) and ILO Right to Organise and Collective Bargaining Convention No 98 (1949), as referred to in those Directives, in order to abide by applicable obligations in the field of labour law. However, this Directive does not create any additional obligation in relation to those Directives.

(32) For applicants for financial support from Union funds and programmes under Regulation (EU) 2021/1060 of the European Parliament and of the Council ([11])and the enabling conditions therein, the rules for public procurement and concessions should be applied adequately, including with regard to compliance with collective agreements provisions.

(33) Reliable monitoring and data collection are essential for effective minimum wage protection. For the purposes of data collection, Member States may rely on sufficiently representative sample surveys, national databases, harmonised data from Eurostat and other publicly accessible sources such as the Organisation for Economic Cooperation and Development. In exceptional cases where accurate data is not available, Member States might use estimates. Employers, in particular microenterprises and other SMEs, should not bear an unnecessary administrative burden with regard to the implementation of data collection requirements. The Commission should report every second year to the European Parliament and to the Council its analysis of levels and developments in the adequacy and coverage of statutory minimum wages as well as the collective bargaining coverage on the basis of data and information to be provided by Member States.

In addition, progress should be monitored in the framework of the process of economic and employment policy coordination at Union level. In that context, the Council or the Commission can request the Employment Committee and the Social Protection Committee, in accordance with Articles 150 and 160 TFEU respectively, to examine, in their respective area of competence, the development of the collective bargaining coverage and the adequacy of statutory minimum wages in the Member States on the basis of the report produced by the Commission and other multilateral surveillance tools such as benchmarking. During such an examination, the Committees are to involve the social partners at Union level, including cross-sectoral social partners, in accordance with Articles 150 and 160 TFEU respectively.

([8]) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

([9]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

([10]) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

([11]) Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

(34) Workers should have easy access to comprehensive information on statutory minimum wages as well as on minimum wage protection provided for in universally applicable collective agreements to ensure transparency and predictability as regards their working conditions, including for persons with disabilities in accordance with Directive (EU) 2016/2102 of the European Parliament and of the Council ([12]).

(35) Workers and workers' representatives, including those who are trade union members or representatives, should be in a position to exercise their right of defence when their rights relating to minimum wage protection are provided for in national law or collective agreements and have been violated. In order to prevent workers from being deprived of their rights provided for in national law or collective agreements and without prejudice to specific forms of redress and dispute resolution provided for in collective agreements, including systems of collective dispute resolution, Member States should take the necessary measures to ensure that workers have access to effective, timely and impartial dispute resolution and a right to redress, as well as effective judicial and/or administrative protection from any form of detriment, if they decide to exercise their right of defence. Social partners' involvement in the further development of impartial dispute resolution mechanisms in Member States can be beneficial. Workers should be informed about the redress mechanisms for the purpose of exercising their right to redress.

(36) The Commission should conduct an evaluation providing the basis for a review on the effective implementation of this Directive. The European Parliament and the Council should be informed of the results of that review.

(37) The reforms and measures adopted by the Member States to promote adequate minimum wage protection of workers, while being steps in the right direction, have not always been comprehensive and systematic. Moreover, action taken at Union level to improve the adequacy and coverage of minimum wages can contribute to further improving living and working conditions in the Union and mitigating concerns about possible adverse economic effects resulting from isolated measures of Member States. Since the objectives of this Directive cannot be sufficiently achieved by the Member States, but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(38) This Directive lays down procedural obligations as minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain more favourable provisions. Rights acquired under the existing national legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights for workers, nor can it constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this Directive, including, in particular, with regard to the lowering or abolition of minimum wages.

(39) In implementing this Directive Member States should avoid imposing unnecessary administrative, financial and legal constraints, in particular if they hold back the creation and development of SMEs. Member States are therefore encouraged to assess the impact of their transposition measures on SMEs in order to ensure that they are not disproportionately affected, paying particular attention to microenterprises and to the administrative burden, and to publish the results of such assessments. If Member States find that SMEs are disproportionately affected by the transposition measures, they should consider introducing measures to support SMEs to adjust their remuneration structures to the new requirements.

([12]) Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (OJ L 327, 2.12.2016, p. 1).

(40) Regulations (EU) 2021/240 ([13]) and (EU) 2021/1057 ([14]) of the European Parliament and of the Council are available to Member States to develop or improve the technical aspects of minimum wage frameworks, including on the assessment of adequacy, monitoring and data collection, broadening access, as well as on enforcement and on general capacity building relating to the implementation of those frameworks. In accordance with Regulation (EU) 2021/1057, Member States are to allocate an appropriate amount to the capacity building of the social partners,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. With a view to improving living and working conditions in the Union, in particular the adequacy of minimum wages for workers in order to contribute to upward social convergence and reduce wage inequality, this Directive establishes a framework for:

(a) adequacy of statutory minimum wages with the aim of achieving decent living and working conditions;

(b) promoting collective bargaining on wage-setting;

(c) enhancing effective access of workers to rights to minimum wage protection where provided for in national law and/or collective agreements.

2. This Directive shall be without prejudice to the full respect for the autonomy of the social partners, as well as their right to negotiate and conclude collective agreements.

3. In accordance with Article 153(5) TFEU, this Directive shall be without prejudice to the competence of Member States in setting the level of minimum wages, as well as to the choice of the Member States to set statutory minimum wages, to promote access to minimum wage protection provided for in collective agreements, or both.

4. The application of this Directive shall be in full compliance with the right to collective bargaining. Nothing in this Directive shall be construed as imposing an obligation on any Member State:

(a) where wage formation is ensured exclusively via collective agreements, to introduce a statutory minimum wage; or

(b) to declare any collective agreement universally applicable.

5. The acts by which a Member State implements the measures concerning minimum wages of seafarers periodically set by the Joint Maritime Commission or another body authorised by the Governing Body of the International Labour Office shall not be subject to Chapter II of this Directive. Such acts shall be without prejudice to the right to collective bargaining and to the possibility to adopt higher minimum wage levels.

([13]) Regulation (EU) 2021/240 of the European Parliament and of the Council of 10 February 2021 establishing a Technical Support Instrument (OJ L 57, 18.2.2021, p. 1).

([14]) Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013 (OJ L 231, 30.6.2021, p. 21).

Article 2

Scope

This Directive applies to workers in the Union who have an employment contract or employment relationship as defined by law, collective agreements or practice in force in each Member State, with consideration to the case-law of the Court of Justice.

Article 3

Definitions

For the purposes of this Directive, the following definitions apply:

(1) 'minimum wage' means the minimum remuneration set by law or collective agreements that an employer, including in the public sector, is required to pay to workers for the work performed during a given period;

(2) 'statutory minimum wage' means a minimum wage set by law or other binding legal provisions, with the exclusion of minimum wages set by collective agreements that have been declared universally applicable without any discretion of the declaring authority as to the content of the applicable provisions;

(3) 'collective bargaining' means all negotiations which take place according to national law and practice in each Member State between an employer, a group of employers or one or more employers' organisations on the one hand, and one or more trade unions on the other, for determining working conditions and terms of employment;

(4) 'collective agreement' means a written agreement regarding provisions on working conditions and terms of employment concluded by the social partners that have the capacity to bargain on behalf of workers and employers respectively according to national law and practice, including collective agreements that have been declared universally applicable;

(5) 'collective bargaining coverage' means the share of workers at national level to whom a collective agreement applies, calculated as the ratio of the number of workers covered by collective agreements to the number of workers whose working conditions may be regulated by collective agreements in accordance with national law and practice.

Article 4

Promotion of collective bargaining on wage-setting

1. With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall:

(a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, in particular at sector or cross-industry level;

(b) encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting;

(c) take measures, as appropriate, to protect the exercise of the right to collective bargaining on wage-setting and to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting;

(d) for the purpose of promoting collective bargaining on wage-setting, take measures, as appropriate, to protect trade unions and employers' organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In addition, each Member State in which the collective bargaining coverage rate is less than a threshold of 80 % shall provide for a framework of enabling conditions for collective bargaining, either by law after consulting the social partners or by agreement with them. Such a Member State shall also establish an action plan to promote collective bargaining. The Member State shall establish such an action plan after consulting the social partners or by agreement with the social partners, or, following a joint request by the social partners, as agreed between the social partners. The action plan shall set out a clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage, in full respect for the autonomy of the social partners. The Member State shall review its action plan regularly, and shall update it if needed. Where a Member State updates its action plan, it shall do so after consulting the social partners or by agreement with them, or, following a joint request by the social partners, as agreed between the social partners. In any event, such an action plan shall be reviewed at least every five years. The action plan and any update thereof shall be made public and notified to the Commission.

CHAPTER II

STATUTORY MINIMUM WAGES

Article 5

Procedure for setting adequate statutory minimum wages

1. Member States with statutory minimum wages shall establish the necessary procedures for the setting and updating of statutory minimum wages. Such setting and updating shall be guided by criteria set to contribute to their adequacy, with the aim of achieving a decent standard of living, reducing in-work poverty, as well as promoting social cohesion and upward social convergence, and reducing the gender pay gap. Member States shall define those criteria in accordance with their national practices in relevant national law, in decisions of their competent bodies or in tripartite agreements. The criteria shall be defined in a clear way. Member States may decide on the relative weight of those criteria, including the elements referred to in paragraph 2, taking into account their national socioeconomic conditions.

2. The national criteria referred to in paragraph 1 shall include at least the following elements:

(a) the purchasing power of statutory minimum wages, taking into account the cost of living;

(b) the general level of wages and their distribution;

(c) the growth rate of wages;

(d) long-term national productivity levels and developments.

3. Without prejudice to the obligations set out in this Article, Member States may additionally use an automatic mechanism for indexation adjustments of statutory minimum wages, based on any appropriate criteria and in accordance with national laws and practices, provided that the application of that mechanism does not lead to a decrease of the statutory minimum wage.

4. Member States shall use indicative reference values to guide their assessment of adequacy of statutory minimum wages. To that end, they may use indicative reference values commonly used at international level such as 60 % of the gross median wage and 50 % of the gross average wage, and/or indicative reference values used at national level.

5. Member States shall ensure that regular and timely updates of statutory minimum wages take place at least every two years or, for Member States which use an automatic indexation mechanism as referred to in paragraph 3, at least every four years.

6. Each Member State shall designate or establish one or more consultative bodies to advise the competent authorities on issues related to statutory minimum wages, and shall enable the operational functioning of those bodies.

Article 6

Variations and deductions

1. Where Member States allow for different rates of statutory minimum wage for specific groups of workers or for deductions that reduce the remuneration paid to a level below that of the relevant statutory minimum wage, they shall ensure that those variations and deductions respect the principles of non-discrimination and proportionality, the latter including the pursuit of a legitimate aim.

2. Nothing in this Directive shall be construed as imposing an obligation on Member States to introduce variations of or deductions from statutory minimum wages.

Article 7

Involvement of the social partners in the setting and updating of statutory minimum wages

Member States shall take the necessary measures to involve the social partners in the setting and updating of statutory minimum wages in a timely and effective manner that provides for their voluntary participation in the discussions throughout the decision-making process, including through participation in the consultative bodies referred to in Article 5(6) and in particular as concerns:

(a) the selection and application of criteria for the determination of the level of the statutory minimum wage, and the establishment of an automatic indexation formula and its modification where such formula exists, referred to in Article 5(1), (2) and (3);

(b) the selection and application of indicative reference values referred to in Article 5(4) for the assessment of the adequacy of statutory minimum wages;

(c) the updates of statutory minimum wages referred to in Article 5(5);

(d) the establishment of variations and deductions in statutory minimum wages referred to in Article 6;

(e) the decisions both on the collection of data and the carrying out of studies and analyses to provide information to authorities and other relevant parties involved in statutory minimum wage-setting.

Article 8

Effective access of workers to statutory minimum wages

Member States shall, with the involvement of the social partners, take the following measures to enhance the effective access of workers to statutory minimum wage protection as appropriate, including, where appropriate, strengthening its enforcement:

(a) provide for effective, proportionate and non-discriminatory controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of statutory minimum wages;

(b) develop the capability of enforcement authorities, in particular through training and guidance, to proactively target and pursue non-compliant employers.

CHAPTER III

HORIZONTAL PROVISIONS

Article 9

Public procurement

In accordance with Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, Member States shall take appropriate measures to ensure that, in the awarding and performance of public procurement or concession contracts, economic operators and their subcontractors comply with the applicable obligations regarding wages, the right to organise and collective bargaining on wage-setting, in the field of social and labour law established by Union law, national law, collective agreements or international social and labour law provisions, including ILO Freedom of Association and the Protection of the Right to Organise Convention No 87 (1948) and ILO Right to Organise and Collective Bargaining Convention No 98 (1949).

Article 10

Monitoring and data collection

1. Member States shall take the appropriate measures to ensure that effective data collection tools are in place to monitor minimum wage protection.

2. Member States shall report the following data and information to the Commission every second year, before 1 October of the reporting year:

(a) the rate and development of collective bargaining coverage;

(b) for statutory minimum wages:

  (i) the level of the statutory minimum wage and the share of workers covered by it;

  (ii) a description of the existing variations and deductions and the reasons for their introduction and the share of workers covered by variations, as far as data is available;

(c) for minimum wage protection provided for only in collective agreements:

  (i) the lowest pay rates provided for in collective agreements covering low-wage earners or an estimate thereof, if accurate data is not available to the responsible national authorities, and the share of workers covered by them or an estimate thereof, if accurate data is not available to the responsible national authorities;

  (ii) the level of wages paid to workers not covered by collective agreements and its relation to the level of wages paid to workers covered by collective agreements.

The Member States that are subject to the reporting obligations referred to in first subparagraph, point (c) shall be required to report the data referred to in point (i) thereof at least with regard to sectoral, geographical and other multi-employer collective agreements, including collective agreements that have been declared universally applicable.

Member States shall provide the statistics and information referred to in this paragraph disaggregated by gender, age, disability, company size and sector as far as available.

The first report shall cover 2021, 2022 and 2023 and shall be delivered by 1 October 2025. The Member States may omit statistics and information which are not available before 15 November 2024.

3. The Commission shall analyse the data and information transmitted by the Member States in the reports referred to in paragraph 2 of this Article and in the action plans referred to in Article 4(2). It shall report in this regard every second year to the European Parliament and to the Council and shall simultaneously publish the data and information transmitted by Member States.

Article 11

Information on minimum wage protection

Member States shall ensure that information regarding statutory minimum wages as well as minimum wage protection provided for in universally applicable collective agreements, including information on redress mechanisms, is publicly available, where necessary in the most relevant language, as determined by the Member State, in a comprehensive and easily accessible way, including to persons with disabilities.

Article 12

Right to redress and protection against adverse treatment or consequences

1. Member States shall ensure that, without prejudice to specific forms of redress and dispute resolution provided for, where applicable, in collective agreements, workers, including those whose employment relationship has ended, have access to effective, timely and impartial dispute resolution and a right to redress, in the case of infringements of rights relating to statutory minimum wages or relating to minimum wage protection, where such rights are provided for in national law or collective agreements.

2. Member States shall take the measures necessary to protect workers and workers' representatives, including those who are trade union members or representatives, from any adverse treatment by the employer and from any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance in the case of infringements of rights relating to minimum wage protection, where such rights are provided for in national law or collective agreements.

Article 13

Penalties

Member States shall lay down the rules on penalties applicable to infringements of rights and obligations falling within the scope of this Directive, where those rights and obligations are provided for in national law or collective agreements. In Member States without statutory minimum wages, those rules may contain or be limited to a reference to compensation and/or contractual penalties provided for, where applicable, in rules on enforcement of collective agreements. The penalties provided for shall be effective, proportionate and dissuasive.

CHAPTER IV

FINAL PROVISIONS

Article 14

Dissemination of information

Member States shall ensure that the national measures transposing this Directive, together with the relevant provisions already in force relating to the subject matter as set out in Article 1, are brought to the attention of workers and employers, including SMEs.

Article 15

Evaluation and review

By 15 November 2029, the Commission shall, after consulting the Member States and the social partners at Union level, conduct an evaluation of this Directive. The Commission shall submit thereafter a report to the European Parliament and the Council reviewing the implementation of this Directive and propose, where appropriate, legislative amendments.

Article 16

Non-regression and more favourable provisions

1. This Directive shall not constitute valid grounds for reducing the general level of protection already provided to workers within Member States, in particular with regard to the lowering or abolition of minimum wages.

2. This Directive shall not affect Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to encourage or permit the application of collective agreements which are more favourable to workers. It shall not be construed as preventing Member States from increasing statutory minimum wages.

3. This Directive is without prejudice to any rights conferred on workers by other legal acts of the Union.

Article 17

Transposition and implementation

1. Member States shall adopt the measures necessary to comply with this Directive by 15 November 2024. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

3. Member States shall take, in accordance with their national law and practice, adequate measures to ensure the effective involvement of the social partners with a view to the implementation of this Directive. To that end, they may entrust the social partners with that implementation, in all or in part, including with regard to the establishment of an action plan in accordance with Article 4(2), where the social partners jointly request to do so. In so doing, the Member States shall take all necessary steps to ensure that the obligations laid down in this Directive are complied with at all times.

4. The communication referred to in paragraph 2 shall include a description of the involvement of the social partners in the implementation of this Directive.

Article 18

Entry into force

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

Article 19

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 19 October 2022.

For the European Parliament	*For the Council*
The President	*The President*
R. METSOLA	M. BEK

Appendix B:

Industrial Relations (Amendment) Act 2015



Number 27 *of* 2015

Industrial Relations (Amendment) Act 2015

Number 27 *of* 2015

INDUSTRIAL RELATIONS (AMENDMENT) ACT 2015

CONTENTS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, collective citations, construction and commencement
2. Definitions
3. Expenses
4. Repeals

PART 2

REGISTERED EMPLOYMENT AGREEMENTS AND SECTORAL EMPLOYMENT ORDERS

CHAPTER 1

Definitions

5. Definitions (Part 2)

CHAPTER 2

Registered employment agreements

6. Definitions (Chapter 2)
7. Register of Employment Agreements
8. Registration of employment agreements
9. Variation of registered employment agreements
10. Cancellation of registration
11. Adaptation of contracts of service consequential upon registration of employment agreement
12. Interpretation of registered employment agreements

CHAPTER 3

Sectoral employment orders

13. Definitions (Chapter 3)
14. Submission of request to Court
15. Examination by Court

16. Court recommendation to Minister
17. Sectoral employment orders
18. Review of sectoral employment orders
19. Adaptation of contracts of service consequential upon sectoral employment orders
20. Prohibition on penalisation of worker by employer
21. Exemption from obligation to pay remuneration provided by sectoral employment orders

CHAPTER 4

Miscellaneous

22. Records
23. Decision of adjudication officer under section 41 of Act of 2015
24. Amendment of Act of 2015

PART 3

COLLECTIVE BARGAINING

25. Definitions (Part 3)
26. Amendment of section 1 of Principal Act
27. Amendment of Principal Act
28. Amendment of section 2 of Principal Act
29. New section 2A inserted into Principal Act
30. Amendment of section 5 of Principal Act
31. Amendment of section 6 of Principal Act
32. Amendment of section 8 of Principal Act
33. Amendment of section 10 of Principal Act
34. New section 11A inserted into Principal Act
35. Amendment of section 1 of Act of 2004
36. Amendment of section 8 of Act of 2004
37. Amendment of section 9 of Act of 2004
38. Amendment of section 13 of Act of 2004
39. Amendment of section 6 of Unfair Dismissals Act 1977

PART 4

MISCELLANEOUS AMENDMENTS

40. Amendment of section 3 of Act of 1946
41. Making of establishment orders
42. Amendment of section 40 of Act of 1946
43. Amendment of section 1 of Industrial Relations Act 1976

44. Amendment of section 23 of Act of 1990

45. Time limit in relation to trade dispute where retired worker is party to dispute

46. Amendment of Agricultural Workers Joint Labour Committee Establishment Order 1976

ACTS REFERRED TO

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24)
Finance Act 2002 (No. 5)
Industrial Relations (Amendment) Act 2001 (No. 11)
Industrial Relations (Miscellaneous Provisions) Act 2004 (No. 4)
Industrial Relations Act 1946 (No. 26)
Industrial Relations Act 1969 (No. 14)
Industrial Relations Act 1976 (No. 15)
Industrial Relations Act 1990 (No. 19)
Industrial Relations Acts 1946 to 2012
Industrial Training Act 1967 (No. 5)
Interpretation Act 2005 (No. 23)
National Minimum Wage Act 2000 (No. 5)
Protected Disclosures Act 2014 (No. 14)
Redundancy Payments Act 1967 (No. 21)
Taxes Consolidation Act 1997 (No. 39)
Unfair Dismissals Act 1977 (No. 10)
Unfair Dismissals Acts 1977 to 2007
Workplace Relations Act 2015 (No. 16)

Number 27 *of* 2015

INDUSTRIAL RELATIONS (AMENDMENT) ACT 2015

An Act to make further and better provision for promoting harmonious relations between workers and employers and, in particular, to make provision for a system of registered employment agreements and sectoral employment orders; to amend and extend the Industrial Relations (Amendment) Act 2001; to amend and extend the Industrial Relations (Miscellaneous Provisions) Act 2004; to provide for certain interim relief for certain persons in respect of actions taken by them in relation to investigations of trade disputes and, for that purpose, to amend the Unfair Dismissals Act 1977; to amend the Workplace Relations Act 2015 and certain other enactments; and to provide for related matters. [22*nd July*, 2015]

Be it enacted by the Oireachtas as follows:

PART 1

Preliminary and General

Short title, collective citations, construction and commencement

1. (1) This Act may be cited as the Industrial Relations (Amendment) Act 2015.

(2) The Industrial Relations Acts 1946 to 2012 and this Act, other than *sections 24* and *36*, may be cited together as the Industrial Relations Acts 1946 to 2015.

(3) The Industrial Relations Acts 1946 to 2015 and *Part 3*, other than *section 36*, shall be construed together as one Act.

(4) The Unfair Dismissals Acts 1977 to 2007 and *section 39* may be cited together as the Unfair Dismissals Acts 1977 to 2015.

(5) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions.

Definitions

2. In this Act—

"Act of 1946" means the Industrial Relations Act 1946;

"Act of 1990" means the Industrial Relations Act 1990;

"Act of 2015" means the Workplace Relations Act 2015;

"Minister" means the Minister for Jobs, Enterprise and Innovation.

Expenses

3. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

Repeals

4. The following provisions are repealed:

(a) section 10 of the Industrial Relations Act 1969;

(b) paragraphs (d), (e) and (f) of subsection (1) of section 23 of the Act of 1990;

(c) subsections (2), (5) and (6) of section 23 of the Act of 1990;

(d) sections 51 to 54 of the Act of 1990.

PART 2

Registered Employment Agreements and Sectoral Employment Orders

Chapter 1

Definitions

Definitions (*Part 2*)

5. In this Part—

"Court" means the Labour Court;

"trade union" has the same meaning as it has in the Act of 1946;

"worker" has the same meaning as it has in Part III of the Act of 1990.

Chapter 2

Registered employment agreements

Definitions (*Chapter 2*)

6. In this Chapter—

"employment agreement" means an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union or trade unions of workers and one or more than one employer or a trade union of

employers, that is binding only on the parties to the agreement in respect of the workers of that class, type or group;

"enactment" has the same meaning as it has in the Interpretation Act 2005;

"parties to the agreement" means—

(a) in the case of the workers, the trade union or trade unions specified in the agreement, and

(b) in the case of the employers, the employer, employers or trade union of employers specified in the agreement;

"Register of Employment Agreements" has the meaning assigned to it by *section 7*;

"registered employment agreement" means an employment agreement for the time being registered in the Register of Employment Agreements;

"trade dispute" has the same meaning as it has in the Act of 1946.

Register of Employment Agreements

7. (1) The Court shall establish and maintain a register of employment agreements, in this Chapter referred to as the Register of Employment Agreements.

(2) The Register of Employment Agreements shall include—

(a) notice of the registration of an employment agreement in accordance with *section 8*, together with such particulars of the agreement as the Court considers necessary,

(b) notice of the variation of a registered employment agreement in accordance with *section 9*, together with such particulars of the variation as the Court considers necessary,

(c) notice of the cancellation of the registration of an employment agreement in accordance with *section 10*, and

(d) details of any other matters the Court considers appropriate.

(3) The Court shall publish the Register of Employment Agreements on the internet.

(4) References to the Register of Employment Agreements in any enactment in force immediately before the commencement of this section shall, on and after such commencement, be construed as references to the Register of Employment Agreements maintained under this section.

Registration of employment agreements

8. (1) Any party to an employment agreement may apply to the Court to register the agreement in the Register of Employment Agreements.

(2) An application to register an employment agreement shall be accompanied by—

(a) a copy of the agreement, and

(b) confirmation, in such form and accompanied by such documentation as the Court may specify, that the trade union of workers is, or trade unions of workers are, substantially representative of the workers in the class, type or group to which the agreement is expressed to apply.

(3) Where an application is made to the Court to register an employment agreement in the Register of Employment Agreements, the Court shall, subject to this section, register the agreement if it is satisfied that—

(a) there is agreement amongst all of the parties to the agreement that it should be registered,

(b) the agreement is expressed to apply to all workers of a particular class, type or group and their employers and that it is normal and desirable practice or that it is expedient to have a separate agreement for that class, type or group,

(c) the trade union of workers is, or trade unions of workers are, substantially representative of the workers to whom the agreement relates, and in satisfying itself in that regard the Court shall take into consideration the number of workers to whom the agreement relates represented by the trade union or trade unions specified in the agreement that are employed by the employer or employers specified in the agreement,

(d) the agreement provides that if a trade dispute occurs between workers to whom the agreement relates and their employers, industrial action or a lock-out shall not take place until the dispute has been submitted for settlement by negotiation in the manner specified in the agreement,

(e) the agreement specifies the circumstances in which a party or parties to the agreement may terminate the agreement,

(f) registration of the agreement is likely to promote—

(i) harmonious relations between the workers concerned and their employer, and

(ii) the avoidance of industrial unrest,

and

(g) the agreement is in a form suitable for registration.

(4) Where an application is made to the Court to register an employment agreement, the Court shall direct such parties to the agreement as the Court shall specify to publish specified particulars of the agreement in such manner as, in the opinion of the Court, is best calculated to bring the application to the notice of all persons concerned.

(5) (a) The Court shall not register an employment agreement until at least 14 days after publication of particulars of the agreement in accordance with *subsection (4)*.

(b) If, within 14 days of publication of particulars of the agreement in accordance with *subsection (4)*, the Court receives notice of an objection to the agreement being registered, the Court shall, unless it considers the objection frivolous, consider the objection and shall hear all parties appearing to the Court to be interested and desiring to be heard, and if, after such consideration, the Court is

not satisfied that the agreement complies with the requirements specified in *subsection (3)*, the Court shall refuse to register the agreement.

(6) A registered employment agreement shall not prejudice any rights as to rates of remuneration or conditions of employment conferred on any worker by or under this or any other Act.

(7) References to a registered employment agreement in any enactment in force immediately before the commencement of this section shall, on and after such commencement, be construed as references to a registered employment agreement within the meaning of this Chapter.

(8) In this section—

"industrial action" has the same meaning as it has in Part II of the Act of 1990;

"lock-out" has the same meaning as it has in Part II of the Redundancy Payments Act 1967.

Variation of registered employment agreements

9. (1) Subject to this section, a party to a registered employment agreement may apply to the Court to vary the agreement in its application to any worker or workers to whom it applies.

(2) Where all of the parties to the registered employment agreement agree to vary the agreement in the terms of the proposed application, the Court shall within 6 weeks of receipt of an application under *subsection (1)* consider the application and shall hear all persons appearing to the Court to be interested and desiring to be heard.

(3) Not later than 4 weeks after considering an application under *subsection (2)* and where it is satisfied that it is appropriate to do so, having regard to the matters specified in *subsection (3)* of *section 8*, the Court shall, as it thinks fit, refuse the application or make an order varying the agreement in such manner as it thinks proper.

(4) Where a party to a registered employment agreement wishes to apply to the Court to vary the agreement, and one or more parties to the agreement does not agree with the proposed variation, a party to the agreement may invoke the dispute resolution procedures contained in the agreement.

(5) Where the dispute resolution procedures have been invoked under *subsection (4)* and the parties to the registered employment agreement have failed to reach agreement, a party to the registered employment agreement may refer the dispute to the Workplace Relations Commission for conciliation.

(6) Following a referral of a dispute to the Workplace Relations Commission under *subsection (5)*, where the parties have failed to arrive at a settlement of the dispute through conciliation, the Commission shall, within 6 weeks of referral of the dispute, forward a report to the Court stating that it is satisfied that no further efforts on its part will advance the resolution of the dispute and, notwithstanding section 26 of the Act of 1990, the Commission shall request the Court to investigate the dispute.

(7) On receipt of a report under *subsection (6)*, the Court shall consider the request and shall hear all persons appearing to the Court to be interested and desiring to be heard, and the Court shall, within 6 weeks of receipt of the report, issue a recommendation to the parties to the registered employment agreement setting out its opinion on the merits of the dispute and the terms on which it should be settled.

(8) Where, 6 weeks after the date on which a recommendation under *subsection (7)* has issued, the dispute has not been resolved, a party to the agreement may apply to the Court to vary the agreement in the terms of the Court's recommendation.

(9) The Court shall consider an application under *subsection (8)* and shall hear all persons appearing to the Court to be interested and desiring to be heard, and after such consideration, where it is satisfied that it is appropriate to do so having regard to the matters specified in *subsection (3)* of *section 8*, the Court shall, within 6 weeks of receipt of the application, as it thinks fit, refuse the application or make an order varying the agreement in such manner as it thinks proper.

(10) Where a registered employment agreement provides that a party may withdraw from the agreement where the Court has made an order under *subsection (9)*, the Court shall where it has—

(a) made an order under that subsection, and

(b) received notice from a party to the agreement of that party's proposal to withdraw from the agreement,

cancel or amend the agreement as appropriate.

Cancellation of registration

10. (1) The registration of an employment agreement may be cancelled by the Court on the joint application of all parties to the agreement if the Court is satisfied that the consent of all such parties to its cancellation has been given voluntarily.

(2) Where a registered employment agreement does not provide for its duration, the Court may, after the lapse of 12 months from the date of registration, cancel the registration on the application, made after 6 months' notice to the Court, of all parties to the agreement.

(3) (a) Where a registered employment agreement is expressed to be for a specified period, it shall, if in force at the end of that period, and notwithstanding any provision that it shall cease to have effect at the expiration of such period, continue in force until its registration is cancelled in accordance with this section.

(b) The registration of an employment agreement continued in force under *paragraph (a)* may be cancelled by the Court on the application of any party to the agreement, made after 3 months' notice to the Court, and consented to by all parties to the agreement.

(4) Where a registered employment agreement is terminated by any party to the agreement in accordance with any provision contained in the agreement, the Court shall, on receiving notice of the termination, cancel the registration.

(5) The Court may cancel the registration of an employment agreement if it is satisfied, having regard to *subsection (3)(c)* of *section 8*, that a trade union who was a party to the agreement is no longer substantially representative of the workers concerned.

Adaptation of contracts of service consequential upon registration of employment agreement

11. (1) A registered employment agreement shall, so long as it continues to be registered, apply, for the purposes of this section, to every worker of the class, type or group to which it is expressed to apply, and the employer or employers to which it is expressed to apply.

(2) If a contract between a worker of a class, type or group to which a registered employment agreement applies and his or her employer provides for the payment of remuneration at a rate (in this subsection referred to as the "contract rate") less than the rate (in this subsection referred to as the "agreement rate") provided by such agreement and applicable to such worker, the contract shall, in respect of any period during which the agreement is registered, have effect as if the agreement rate were substituted for the contract rate.

(3) If a contract between a worker of a class, type or group to which a registered employment agreement applies and his or her employer provides for conditions of employment (in this subsection referred to as the "contract conditions") less favourable than the conditions (in this subsection referred to as the "agreement conditions") fixed by the agreement and applicable to such worker, the contract shall, in respect of any period during which the agreement is registered, have effect as if the agreement conditions were substituted for the contract conditions.

Interpretation of registered employment agreements

12. (1) The Court may at any time, on the application of any person, give its decision on any question as to the interpretation of a registered employment agreement or its application to a particular person.

(2) A court of competent jurisdiction, in determining any question arising in proceedings before it as to the interpretation of a registered employment agreement or its application to a particular person, shall have regard to any decision of the Court on the said agreement referred to it in the course of the proceedings.

(3) If any question arises in proceedings before a court of competent jurisdiction as to the interpretation of a registered employment agreement or its application to a particular person, the court may, if it thinks proper, refer the question to the Court for its decision.

Chapter 3

Sectoral employment orders

Definitions (*Chapter 3*)

13. In this Chapter—

"Act of 2000" means the National Minimum Wage Act 2000;

"economic sector" means a sector of the economy concerned with a specific economic activity requiring specific qualifications, skills or knowledge;

"overtime" means any hours worked in excess of normal working hours;

"remuneration" means basic pay and may include pay in excess of basic pay in respect of—

(a) shift work,

(b) piece work,

(c) overtime,

(d) unsocial hours worked,

(e) hours worked on a Sunday, or

(f) travelling time (when working away from base),

but shall not include remuneration paid by an employer to his or her spouse, civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, step-son, step-daughter, grandson, grand-daughter, brother, sister, half-brother or half-sister;

"sectoral employment order" has the meaning assigned to it by *section 17*.

Submission of request to Court

14. (1) Subject to *subsection (3)*—

(a) a trade union of workers,

(b) a trade union or an organisation of employers, or

(c) a trade union of workers jointly with a trade union or an organisation of employers,

may request the Court to 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 the economic sector in respect of which the request is expressed to apply.

(2) A request under this section shall include confirmation, in such form and accompanied by such documentation as the Court may specify that—

(a) where the request is made by a trade union of workers or jointly with the trade union of workers, the trade union of workers is substantially representative of the workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and

(b) where the request is made by a trade union or an organisation of employers or jointly with a trade union or an organisation of employers, the trade union or organisation concerned is substantially representative of the employers of the workers specified in *paragraph (a)*.

(3) Where the Minister has made a sectoral employment order in relation to a class, type or group of workers in a particular economic sector, the Court shall not consider a request under *subsection (1)* in relation to the same class, type or group of workers in that sector, until at least 12 months after the date of the order, unless the Court is satisfied that exceptional and compelling circumstances exist which justify consideration of an earlier request.

(4) A request under *subsection (1)* shall be in a form prescribed by the Court.

Examination by Court

15. (1) Where the Court receives a request under *section 14* it shall not undertake an examination in accordance with this section unless it is satisfied that—

(a) following consideration of any documentation submitted under *subsection (2)* of *section 14*—

(i) the trade union of workers is substantially representative of the workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and in satisfying itself in that regard, the Court shall take into consideration the number of workers in that class, type or group represented by the trade union of workers, and

(ii) where the request is made by a trade union or organisation of employers or jointly with a trade union or organisation of employers, the trade union or organisation concerned is substantially representative of the employers in the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and in satisfying itself in that regard, the Court shall take into consideration the number of workers employed in the particular class, type or group in the economic sector concerned by employers represented by the trade union or organisation of employers concerned,

(b) the request is expressed to apply to all workers of the particular class, type or group and their employers in the economic sector in respect of which the request is expressed to apply,

(c) it is a normal and desirable practice, or that it is expedient, to have separate terms and conditions relating to remuneration, sick pay schemes or pension schemes in respect of workers of the particular class, type or group in the economic sector in respect of which the request is expressed to apply, and

(d) any recommendation is likely to promote harmonious relations between workers of the particular class, type or group and their employers in the economic sector in respect of which the request is expressed to apply.

(2) Prior to undertaking an examination under this section, the Court shall publish in such manner as, in the opinion of the Court, is best calculated to bring the request to the notice of all interested persons concerned, notice of its intention to undertake an examination under this section.

(3) A notice under *subsection (2)* shall invite representations to be made to the Court from any interested parties not later than 28 days after the date of the notice.

(4) Not earlier than 28 days after the date of a notice under *subsection (2)*, the Court may hear all parties appearing to the Court to be interested and desiring to be heard.

Court recommendation to Minister

16. (1) Subject to this section, the Court shall, where it considers it appropriate to do so, having heard all parties appearing to the Court to be interested and desiring to be heard, and having regard to the submissions concerned and the matters specified in *subsection (2)*, make a recommendation to the Minister.

(2) When making a recommendation under this section, the Court shall have regard to the following matters:

(a) the potential impact on levels of employment and unemployment in the identified economic sector concerned;

(b) the terms of any relevant national agreement relating to pay and conditions for the time being in existence;

(c) the potential impact on competitiveness in the economic sector concerned;

(d) the general level of remuneration in other economic sectors in which workers of the same class, type or group are employed;

(e) that the sectoral employment order shall be binding on all workers and employers in the economic sector concerned.

(3) A recommendation under this section shall—

(a) specify the class, type or group of workers and the economic sector in relation to which the recommendation shall apply,

(b) be accompanied by a report on the circumstances surrounding the making of the recommendation, including confirmation that the Court has had regard to the matters set out in *subsection (2)*, and

(c) be made not later than 6 weeks after a hearing under *section 15*.

(4) The Court shall not make a recommendation under this section unless it is satisfied that to do so—

(a) would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest in the economic sector concerned, and

(b) is reasonably necessary to—

(i) promote and preserve high standards of training and qualification, and

(ii) ensure fair and sustainable rates of remuneration,

in the economic sector concerned.

(5) A recommendation under this section may provide for all or any of the following in respect of the workers of the class, type or group in the economic sector concerned:

(a) a minimum hourly rate of basic pay that is greater than the minimum hourly rate of pay declared by order for the time being in force under the Act of 2000;

(b) not more than 2 higher hourly rates of basic pay based on—

(i) length of service in the economic sector concerned, or

(ii) the attainment of recognised standards or skills;

(c) minimum hourly rates of basic pay for persons who—

(i) have not attained the age of 18 years,

(ii) enter employment for the first time after attaining the age of 18 years,

(iii) having entered into employment before attaining the age of 18 years, continue in employment on attaining that age, or

(iv) have attained the age of 18 years and, during normal working hours, undergo a course of study or training prescribed by regulations made by the Minister under section 16 of the Act of 2000, reduced to the percentage set out in section 14, 15 or 16 of that Act for the category of worker concerned;

(d) minimum hourly rates of basic pay for apprentices;

(e) any pay in excess of basic pay in respect of shift work, piece work, overtime, unsocial hours worked, hours worked on a Sunday, or travelling time (when working away from base);

(f) the requirements of a pension scheme, including a minimum daily rate of contribution to the scheme by a worker and an employer; and

(g) the requirements of a sick pay scheme.

(6) A recommendation under this section shall include procedures that shall apply in relation to the resolution of a dispute concerning the terms of a sectoral employment order.

(7) Subject to *sections 14* and *15*, a recommendation under this section may provide for the amendment or cancellation of a recommendation previously made under this section and confirmed by the Minister by a sectoral employment order.

(8) In this section "apprentice" has the same meaning as it has in the Industrial Training Act 1967.

Sectoral employment orders

17. (1) Subject to *subsection (4)*, the Minister shall, not later than 6 weeks after receiving a recommendation of the Court under *section 16*, where he or she is satisfied, having regard to the report referred to in *section 16(3)(b)*, that the Court has complied with the provisions of this Chapter, accept the recommendation and by order confirm the terms of the recommendation, from such date, (on or after the date of the order) as the Minister shall specify in the order.

(2) An order under this section shall, in this Chapter, be referred to as a sectoral employment order.

(3) Where the Minister is not satisfied that the Court has complied with the provisions of this Chapter, he or she shall—

(a) refuse to make a sectoral employment order confirming the terms of the recommendation, and

(b) notify the Court in writing of his or her decision and the reasons for the decision.

(4) Where it is proposed to make an order under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made unless a resolution approving of the draft has been passed by each such House.

Review of sectoral employment orders

18. (1) Subject to *subsection (2)*, the Minister may request the Court to review the terms of a sectoral employment order.

(2) The Minister shall not make a request under *subsection (1)*—

(a) until at least 3 years after the date of a sectoral employment order in relation to which the request relates, or

(b) where a sectoral employment order has been amended, at least 3 years after the date on which the order was amended.

(3) Where the Minister makes a request under *subsection (1)*, the Court shall examine the terms and conditions of the class, type or group of workers in the economic sector concerned as if the request were a request under *section 14* and *sections 13* to *17* shall apply with the necessary modifications in relation to a request under *subsection (1)*.

Adaptation of contracts of service consequential upon sectoral employment orders

19. (1) A sectoral employment order shall apply, for the purposes of this section, to every worker of the class, type or group in the economic sector to which it is expressed to apply, and his or her employer, notwithstanding that such worker or employer was not a party to a request under *section 14*, or would not, apart from this subsection, be bound by the order.

(2) If a contract between a worker of a class, type or group to which a sectoral employment order applies and his or her employer provides for the payment of remuneration at a rate (in this subsection referred to as the "contract rate") less than

the rate (in this subsection referred to as the "order rate") provided by such order and applicable to such worker, the contract shall, in respect of any period during which the order applies, have effect as if the order rate were substituted for the contract rate.

(3) If a contract between a worker of a class, type or group to which a sectoral employment order applies and his or her employer provides for conditions in relation to a pension scheme or a sick pay scheme (in this subsection referred to as the "contract conditions") less favourable than the conditions (in this subsection referred to as the "order conditions") fixed by the order and applicable to such worker, the contract shall, in respect of any period during which the order applies, have effect as if the order conditions were substituted for the contract conditions.

Prohibition on penalisation of worker by employer

20. (1) An employer shall not penalise or threaten penalisation of a worker for—

(a) invoking any right conferred on him or her by this Chapter,

(b) making a complaint to the Workplace Relations Commission that a provision of this Chapter has been contravened, or

(c) giving notice of his or her intention to do either of the matters referred to in *paragraph (a)* or *(b)*.

(2) *Subsection (1)* does not apply to the making of a complaint that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.

(3) In proceedings under Part 4 of the Act of 2015 in relation to a complaint that *subsection (1)* has been contravened, it shall be presumed, until the contrary is proved, that the worker concerned has acted reasonably and in good faith in forming the opinion and making the communication concerned.

(4) If a penalisation of a worker, in contravention of *subsection (1)*, constitutes a dismissal of the worker within the meaning of the *Unfair Dismissals Acts 1977* to *2015*, relief may not be granted to the worker in respect of that penalisation both under *section 23* and under those Acts.

(5) In this section "penalisation" means any act or omission by an employer or a person acting on behalf of an employer that affects a worker to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—

(a) suspension, lay-off or dismissal (including a dismissal within the meaning of the *Unfair Dismissals Acts 1977* to *2015*), or the threat of suspension, lay-off or dismissal,

(b) demotion or loss of opportunity for promotion,

(c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

(d) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty), and

(e) coercion or intimidation.

Exemption from obligation to pay remuneration provided by sectoral employment orders

21. (1) The Court may, in accordance with this section, exempt an employer from the obligation to pay the remuneration otherwise payable by the employer to a worker or workers in accordance with a sectoral employment order.

(2) An exemption under *subsection (1)* shall remain in force for such period, being not less than 3 months and not more than 24 months from the date on which the exemption is granted, as is specified in the exemption.

(3) (a) Subject to *paragraph (b)* the Court shall not grant an exemption to an employer under *subsection (1)* if the employer has been granted an exemption in respect of the same worker or workers under that subsection within the previous 5 years.

(b) Where an exemption under *subsection (1)* has been granted for a period of less than 24 months, an employer or employer's representative with the employer's consent may, prior to the date on which the exemption is due to expire, apply to the Court to extend the period of the exemption for an additional period.

(c) Where an application is made under *paragraph (b)* the Court shall not extend the period of the exemption for more than 24 months from the date on which the exemption was granted.

(d) Where the period of the exemption has been extended by the Court under *paragraph (b)*, the Court shall not further extend the period.

(4) An employer or employer's representative with the employer's consent may, in the manner and form approved by the Court, apply to the Court for an exemption under *subsection (1)*.

(5) An application under *subsection (4)* shall be accompanied by—

(a) a current tax clearance certificate under section 1095 (inserted by section 127 of the Finance Act 2002) of the Taxes Consolidation Act 1997 in respect of the employer concerned, and

(b) such information, particulars and documentation as the Court may reasonably require for the purpose of determining whether an exemption under *subsection (1)* should be granted, in particular such information in relation to the employer, his or her business and the potential impact of an exemption, as the Court may direct.

(6) On receiving an application under *subsection (4)*, the Court shall convene a hearing of parties to the application and the workers or their representatives and shall give its decision on the application in writing to the parties.

(7) Subject to *subsection (8)*, the Court shall not grant an exemption under *subsection (1)* unless it is satisfied that—

(a) where the employer makes an application he or she has entered into an agreement with—

(i) the majority of the workers,

(ii) the representative of the majority of the workers, or

(iii) a trade union representing the majority of the workers,

in respect of whom the exemption is sought, whereby the workers, the representative of the workers or the trade union, consents to the employer making the application, and to abide by any decision on the application that the Court may make, and

(b) the employer's business is experiencing severe financial difficulties.

(8) Notwithstanding *subsection (7)*, where the Court is not satisfied that the majority of the workers or their representative consents to an application under *paragraph (a)* of that subsection, the Court may grant an exemption under *subsection (1)*, provided the Court is satisfied that—

(a) the employer has informed the workers concerned of the financial difficulties of the business and has attempted to come to an agreement with the workers, their representative or trade union in relation to a reduction of the remuneration provided by the sectoral employment order,

(b) the employer is unable to maintain the terms of the sectoral employment order, and

(c) were the employer compelled to comply with the terms of the sectoral employment order concerned there would be a substantial risk that—

(i) a significant number of the workers concerned would be laid off or made redundant, or

(ii) the sustainability of the employer's business would be significantly adversely affected.

(9) In considering whether to grant an exemption under *subsection (1)*, the Court shall have regard to the following:

(a) whether, if an exemption was granted, it would have an adverse effect on employment levels and distort competition in the economic sector concerned to the detriment of employers not party to the application, who are also subject to the sectoral employment order concerned;

(b) the long term sustainability of the employer's business, were such an exemption to be granted; and

(c) any other matters the Court considers relevant.

(10) An exemption under *subsection (1)* shall specify:

(a) the names and employment positions occupied by the workers to whom the exemption applies;

(b) the duration of the exemption; and

(c) the remuneration to be paid to the worker or workers during the period of the exemption and the worker or workers shall be entitled to be paid not less than that remuneration for the duration of the exemption.

(11) Notwithstanding anything in this section, an exemption under *subsection (1)* shall not specify an hourly rate of pay which is less than that declared by order for the time being in force under the Act of 2000.

(12) Where during the period of an exemption under this section a new worker replaces a worker to whom the exemption relates, the employer may pay the new worker the remuneration specified by the Court in respect of the former worker and shall, as soon as practicable, notify the Court in writing of the employment of the new worker.

(13) Where a contract between an employer and a worker specified in an exemption under *subsection (1)*, provides for the payment of remuneration at a rate higher than that provided by such exemption, the contract shall, in respect of any period during which the exemption is in force, have effect as if the remuneration provided for by such exemption and applicable to such worker were substituted for the remuneration provided for by the contract.

(14) The Court shall establish its own procedures for the hearing of applications, and in relation to incidental matters to be dealt with, under this section.

(15) The Court shall establish and maintain a register of all exemptions under this section and shall publish the register on the internet.

(16) No appeal shall lie from a decision of the Court under this section except to the High Court on a point of law.

Chapter 4

Miscellaneous

Records

22. (1) An employer, to whom a registered employment agreement or sectoral employment order applies, shall keep, at the premises or place where his or her worker works or, if the worker works at 2 or more premises or places, the premises or place from which the activities that the worker is employed to carry on are principally directed or controlled, such records as are necessary to show whether this Part is being complied with in relation to the worker and those records shall be retained by the employer for at least 3 years from the date of their making.

(2) An employer who, without reasonable cause, fails to comply with *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction to a class C fine.

(3) Without prejudice to *subsection (2)*, where an employer fails to keep records under *subsection (1)* in respect of his or her compliance with a particular provision of this Part in relation to a worker, the onus of proving, in proceedings before the Workplace Relations Commission or the Labour Court, that the provision was complied with lies on the employer.

Decision of adjudication officer under section 41 of Act of 2015

23. (1) This section applies to a decision of an adjudication officer under section 41 of the Act of 2015 in relation to a complaint of a contravention of—

(a) *subsection (1)* of *section 20*,

(b) a registered employment agreement (within the meaning of *Chapter 2*), or

(c) a sectoral employment order (within the meaning of *Chapter 3*).

(2) A decision of an adjudication officer to which this section applies shall do one or more of the following, namely—

(a) declare that the complaint was or, as the case may be, was not well founded,

(b) require the employer to comply with the provision in respect of which the complaint concerned relates and, for that purpose, require the employer to take a specified course of action, or

(c) require the employer to pay to the worker compensation of such amount (if any) as the adjudication officer considers just and equitable having regard to all the circumstances, but not exceeding 104 weeks' remuneration in respect of the worker's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977,

and the references in the foregoing paragraphs to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurs, as references to the person who, by virtue of the change, becomes entitled to such ownership.

(3) A decision of the Court under section 44 of the Act of 2015, on appeal from a decision of an adjudication officer to which this section applies, shall affirm, vary or set aside the decision of the adjudication officer.

Amendment of Act of 2015

24. The Act of 2015 is amended—

(a) in section 3 by the insertion of the following subsection after subsection (5):

"(5A) For the purpose of the operation of this Act, and to the extent only that this Act applies, in relation to *Part 2* of the *Industrial Relations (Amendment) Act 2015*, references in this Act to employee shall be construed as references to worker within the meaning of that Part.",

(b) in section 41—

(i) by the insertion of the following subsection after subsection (3):

"(3A) An employer or a trade union representative of an employer affected by an agreement specified in paragraph 29 of Part 1 of Schedule 5 may present a complaint to the Director General that an employer affected by the agreement has contravened the agreement and, where a complaint is so presented, the Director General shall, subject to

section 39, refer the complaint for adjudication by an adjudication officer.",

and

(ii) by the insertion of the following subsection after subsection (18):

"(19) In this section, references to specified person for the purposes of a complaint in relation to a provision specified in—

(a) paragraph 29 or 30 of Part 1 of Schedule 5, or

(b) paragraph 11 of Part 2 of Schedule 5,

shall be construed as references to a trade union representative of the person entitled to present the complaint.",

(c) in Part 2 of Schedule 1, by the insertion of the following paragraph after paragraph 18:

"19. *Part 2* of the *Industrial Relations (Amendment) Act 2015*",

(d) in Schedule 5—

(i) in Part 1, by the insertion of the following paragraphs after paragraph 28:

"29. A registered employment agreement within the meaning of *Chapter 2* of *Part 2* of the *Industrial Relations (Amendment) Act 2015*

30. *Section 20(1)* of the *Industrial Relations (Amendment) Act 2015*",

and

(ii) in Part 2, by the insertion of the following paragraph after paragraph 10:

"11. A sectoral employment order within the meaning of *Chapter 3* of *Part 2* of the *Industrial Relations (Amendment) Act 2015*",

and

(e) in Schedule 6—

(i) in Part 1 (*Acts of Oireachtas*), by the insertion of the following paragraph after paragraph 34:

"35. *Section 23(2)* of the *Industrial Relations (Amendment) Act 2015*",

and

(ii) in Part 2 (*Acts of Oireachtas*), by the insertion of the following paragraph after paragraph 34:

"35. *Section 23(3)* of the *Industrial Relations (Amendment) Act 2015*".

PART 3

COLLECTIVE BARGAINING

Definitions (*Part 3*)

25. In this Part—

"Act of 2004" means the Industrial Relations (Miscellaneous Provisions) Act 2004;

"Principal Act" means the Industrial Relations (Amendment) Act 2001.

Amendment of section 1 of Principal Act

26. Section 1 of the Principal Act is amended, in subsection (1)—

(a) by the insertion of the following definition:

" 'collective bargaining' shall be construed in accordance with section 1A;",

and

(b) by the substitution of the following definition for the definition of "excepted body":

" 'excepted body to which this Act applies' shall be construed in accordance with section 1B;".

Amendment of Principal Act

27. The Principal Act is amended by the insertion of the following sections after section 1:

"Collective bargaining

1A. For the purposes of this Act, '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.

Excepted body to which this Act applies

1B. For the purposes of this Act, 'excepted body to which this Act applies' means a body that is independent and not under the domination and control of an employer or trade union of employers, all the members of which body are employed by the same employer and which carries on engagements or negotiations with the object of reaching agreement regarding the wages or other conditions of employment of its own members (but of no other employees).".

Amendment of section 2 of Principal Act

28. Section 2 of the Principal Act is amended—

(a) in subsection (1)—

(i) by the deletion of "or excepted body",

(ii) by the insertion of ", subject to this Act," after "the Court may",

(iii) in paragraph (a), by the deletion of "negotiations",

(iv) in paragraph (c), by the deletion of "or the excepted body", and

(v) in paragraph (d), by the deletion of "or the excepted body",

and

(b) by the insertion of the following subsections after subsection (2):

"(3) The Court shall decline to conduct an investigation of a trade dispute under subsection (1) where it is satisfied that the number of workers who are party to the trade dispute concerned is such as to be insignificant having regard to the total number of workers employed by the employer concerned in the grade, group or category to which the trade dispute concerned refers.

(4) Where the Court has determined, for the purpose of subsection (3), that the number of workers who are party to the trade dispute concerned is such as not to be insignificant having regard to the total number of workers employed by the employer concerned in the grade, group or category to which the trade dispute concerned refers, the Court shall determine whether the number of the workers who are party to the trade dispute is such as to be insignificant having regard to the total number of workers in the larger related group referred to in subsection (5)(c).

(5) For the purposes of subsection (4)—

(a) the Court shall consider whether the grade, group or category of worker to which the trade dispute refers is related to another grade, group or category of worker employed by the employer concerned,

(b) where the Court is satisfied that the grade, group or category of worker to which the trade dispute refers is related to another grade, group or category of worker also employed by the employer concerned, the Court shall determine the total number of workers employed by the employer concerned in both—

(i) the grade, group or category to which the trade dispute concerned refers, and

(ii) such related grade, group or category of worker,

and

(c) the Court shall, having regard to the total number of workers established pursuant to paragraph (b) (in this section referred to as the 'larger related group'), determine, for the purposes of the determination under subsection (4), whether the number of workers who are party to the trade dispute is such as to be insignificant having regard to such total number of workers in the larger related group.

(6) Where, pursuant to subsection (4), the Court determines that the number of workers who are party to the trade dispute concerned is such as to be insignificant having regard to the total number of workers in the larger related group referred to in that subsection, the Court shall decline to conduct an investigation of the trade dispute concerned under subsection (1) unless it is satisfied that exceptional and compelling circumstances exist which justify the conducting of an investigation of the trade dispute concerned.

(7) Subject to subsections (8) and (9), the Court shall not consider a request referred to in subsection (1) in respect of a grade, group or category of worker to which the trade dispute concerned applies, where the Court has made a recommendation under section 5, or a determination under section 6, in respect of the same grade, group or category of worker and the same employer in the 18 months preceding the making of that request.

(8) Where—

(a) the Court made a recommendation under section 5 pursuant to a request under subsection (1),

(b) the recommendation referred to in paragraph (a) was implemented by the employer following its making, and

(c) at any time during a period of 18 months from the day on which the recommendation referred to in paragraph (a) was made, another request is made under subsection (1) by the same grade, group or category of worker,

notwithstanding subsection (7), the Court may investigate the trade dispute concerned if it is satisfied that following the implementation of such recommendation—

(i) the employer concerned has resiled from that implemented recommendation referred to in paragraph (b), or

(ii) there have been material and adverse changes to the totality of remuneration and conditions of employment of the grade, group or category of worker referred to in paragraph (c).

(9) Where—

(a) the Court made a determination under section 6 pursuant to a request under subsection (1),

(b) the determination referred to in paragraph (a) was complied with by the employer following its making,

(c) at any time during a period of 18 months from the day on which the determination referred to in paragraph (a) was made, another request is made under subsection (1) by the same grade, group or category of worker, and

(d) no application was made under section 10 in respect of such determination,

notwithstanding subsection (7), the Court may investigate the trade dispute concerned if it is satisfied that following compliance with such determination—

(i) the employer concerned has resiled from the determination referred to in paragraph (b), or

(ii) there have been material and adverse changes to the totality of remuneration and conditions of employment of the grade, group or category of worker referred to in paragraph (c).

(10) For the purposes of subsection (1)(a), where an employer asserts that it is the practice of the employer to engage in collective bargaining with an excepted body to which this Act applies, when determining if the excepted body concerned is an excepted body to which this Act applies in respect of the grade, group or category of worker concerned, the Court shall have regard to the establishment, functioning and administration of that excepted body and shall, for such purposes, take into account—

(a) the manner of the election of employees to the excepted body concerned,

(b) the frequency of elections of employees referred to in paragraph (a),

(c) any financing or resourcing of the excepted body concerned that exceeds minimum logistical support provided to it by or on behalf of the employer, and

(d) the length of time the excepted body concerned has been in existence and any prior collective bargaining between the employer and that excepted body.

(11) Where an employer asserts to the Court that it is the practice of the employer to engage in collective bargaining with an excepted body to which this Act applies in respect of the grade, group or category of worker concerned, the employer shall satisfy the Court that it is the practice of that employer to engage in collective bargaining with the

excepted body concerned in respect of the grade, group or category of worker concerned.".

New section 2A inserted into Principal Act

29. The Principal Act is amended by the insertion of the following section after section 2:

"Section 2: supplemental matters relating to number of members of trade union employed by employer

2A. (1) For the purposes of subsection (3) of section 2 in respect of establishing the number of workers who are party to the trade dispute, a statutory declaration made by the chief officer of the trade union which made the request under subsection (1) of section 2, specifying—

(a) the number of the members of that trade union who are in the employment of the employer concerned in the grade, group or category to which the trade dispute refers and who are party to the trade dispute, and

(b) the period of membership of such members in that trade union,

shall be admissible in evidence without further proof, unless the contrary is shown, of such numbers and such period.

(2) Where an employer seeks to have the matters specified in a statutory declaration made pursuant to subsection (1) examined—

(a) the employer may request the Court to satisfy itself that the matters specified in the statutory declaration are correct, and

(b) the Court may, for the purposes of paragraph (a), examine the number of members of the trade union, specified in the statutory declaration as being in the employment of the employer concerned—

(i) in the grade, group or category to which the trade dispute refers, and

(ii) who are party to the trade dispute.

(3) When performing its functions under subsection (2) the Court shall ensure that the identities of the members of the trade union referred to in paragraph (a) of subsection (1) remain confidential for the purposes of subsection (3) of section 2.

(4) The Court shall, following the examination under subsection (2), inform the parties that it is satisfied, or as the case may be, is not satisfied, of the matters specified in paragraphs (a) and (b) of that subsection.

(5) In this section 'chief officer of the trade union' includes the general secretary of the trade union, the general president of the trade union

and any person charged with a general executive authority in respect of the trade union.".

Amendment of section 5 of Principal Act

30. (1) Section 5 of the Principal Act is amended in subsection (1) by the substitution of "the totality of remuneration and conditions of employment" for "terms and conditions of employment".

(2) Section 5 of the Principal Act is amended by the insertion of the following subsections after subsection (2):

"(3) The Court shall not make a recommendation providing for an improvement in the remuneration and conditions of employment of a grade, group or category of worker unless it is satisfied that the totality of the remuneration and conditions of employment of the workers concerned provides a lesser benefit to the workers concerned having regard to the totality of remuneration and conditions of employment of comparable workers employed in similar employments.

(4) When considering if the totality of remuneration and conditions of employment of a grade, group or category of worker provides a lesser benefit to the workers concerned having regard to the totality of remuneration and conditions of employment of comparable workers employed in similar employments, the Court shall have regard to—

(a) the totality of the remuneration and conditions of employment of comparable workers employed in similar employments (whether such comparable workers are represented by a trade union of workers or are not represented by a trade union of workers), and

(b) the comparability of skills, responsibilities, physical and mental effort required to perform the work in which the workers are engaged.

(5) For the purposes of paragraph (a) of subsection (4), the Court may have regard to those in similar employments of an associated employer outside the State.

(6) Where collective agreements concerning the grade, group or category of worker are commonplace in similar employments to the employment which is the subject of the trade dispute, the Court shall, in addition to other evidence presented by the parties, have due regard to the terms of such agreements for the time being in force.

(7) Where collective agreements concerning the grade, group or category of worker are not commonplace in similar employments to the employment which is the subject of the trade dispute, the Court shall have due regard to all evidence presented by the parties whether by way of collective agreements or established, to the satisfaction of the Court, by other means.

(8) The Court shall, for the purpose of making a recommendation, have regard to the effect such recommendation may have on the maintenance of employment and the long term sustainability of the business of the employer.".

Amendment of section 6 of Principal Act

31. Section 6 of the Principal Act is amended—

(a) in subsection (1) by the deletion of "or excepted body",

(b) in subsection (2)—

(i) by the substitution of "shall" for "may", and

(ii) by the substitution of "the totality of remuneration and conditions of employment and may have regard to" for "terms and conditions of employment and to",

and

(c) by the insertion of the following subsections after subsection (3):

"(4) Where, pursuant to paragraph (b) of subsection (3), the Court has decided that the recommendation concerned, or a part of that recommendation, was grounded on unsound or incomplete information, the determination shall be made in accordance with subsections (5) to (9).

(5) The Court shall not make a determination providing for an improvement in the remuneration, terms and conditions of employment of a grade, group or category of worker unless it is satisfied that the totality of remuneration and conditions of employment of the workers concerned provides a lesser benefit to the workers concerned having regard to the totality of remuneration and conditions of employment of comparable workers employed in similar employments.

(6) For the purposes of subsection (5) and the consideration of whether the totality of remuneration and conditions of employment of a grade, group or category of worker provides a lesser benefit to the workers concerned having regard to the totality of remuneration and conditions of employment of comparable workers employed in similar employments, subsections (4) and (5) of section 5 shall apply.

(7) Where collective agreements concerning the grade, group or category of worker are commonplace in similar employments to the employment which is the subject of the dispute, the Court shall, in addition to other evidence presented by the parties, have due regard to the terms of such agreements for the time being in force.

(8) Where collective agreements concerning the grade, group or category of worker are not commonplace in similar employments to the

employment which is the subject of the trade dispute, the Court shall have due regard to all evidence presented by the parties whether by way of collective agreements or established, to the satisfaction of the Court, by other means.

(9) The Court shall, for the purpose of making a determination, have regard to the effect such determination may have on the maintenance of employment and the long term sustainability of the business of the employer.".

Amendment of section 8 of Principal Act

32. Section 8 of the Principal Act is amended in subsection (2), by the deletion of "or excepted body".

Amendment of section 10 of Principal Act

33. Section 10 of the Principal Act is amended in subsection (1), by the deletion of "or excepted body".

New section 11A inserted into Principal Act

34. The Principal Act is amended by the insertion of the following section after section 11:

"Interim relief pending determination of claim for unfair dismissal

11A. (1) Where a worker has made a claim under paragraph (aa) of section 6(2) of the Unfair Dismissals Act 1977, he or she may apply to the Circuit Court for interim relief pending determination of that claim.

(2) Schedule 1 (other than paragraph 1(1)) to the Protected Disclosures Act 2014 shall apply to an application under subsection (1) with the following modifications:

(a) the references to 'employee' shall be construed as references to 'worker or employee';

(b) in paragraph 2(1) the reference to 'the employee having made a protected disclosure' shall be construed as a reference to 'the grounds specified in paragraph (aa) of section 6(2) of the Unfair Dismissals Act 1977'.

(3) An application to the Circuit Court under this section shall be made to the Circuit Court sitting in the circuit in which the employer concerned carries on his or her business.".

Amendment of section 1 of Act of 2004

35. Section 1 of the Act of 2004 is amended by the deletion of the definition of "excepted body".

Amendment of section 8 of Act of 2004

36. Section 8 of the Act of 2004 is amended—

(a) in subsection (1), by the deletion of "negotiations",

(b) in paragraph (a) of subsection (1), by the deletion of "or an excepted body",

(c) in paragraph (b) of subsection (1), by the deletion of "or excepted body",

(d) in paragraph (c) of subsection (1), by the deletion of—

(i) "or excepted body", and

(ii) "or an excepted body",

(e) in paragraph (d) of subsection (1), by the deletion of "or an excepted body",

(f) in paragraph (c) of subsection (2), by the deletion of "or an excepted body",

(g) in paragraph (i) of subsection (2), by the deletion of "or an excepted body",

(h) in paragraph (ii) of subsection (2), by the deletion of "or an excepted body", and

(i) by the insertion of the following subsection after subsection (4):

"(5) In this section, 'collective bargaining' has the meaning assigned to it by section 1A of the Act of 2001 and that section shall apply to this section in the same manner as it applies to that Act.".

Amendment of section 9 of Act of 2004

37. Section 9 of the Act of 2004 is amended in subsection (1) by the deletion of ", an excepted body".

Amendment of section 13 of Act of 2004

38. Section 13 of the Act of 2004 is amended in paragraph (b) of subsection (1) by the substitution of "or any trade union" for ", any trade union or excepted body".

Amendment of section 6 of Unfair Dismissals Act 1977

39. Section 6 of the Unfair Dismissals Act 1977 is amended in subsection (2) by the insertion of the following paragraph after paragraph (a):

"(aa) without prejudice to paragraph (a), the employee—

(i) being a member of a trade union which made a request referred to in section 2(1) of the Industrial Relations (Amendment) Act 2001,

(ii) being in the employment of the employer concerned in the grade, group or category to which the trade dispute, referred to in that section, relates, and

(iii) having provided evidence or other information or assistance to any person, for the purposes of the examination of that request by the Labour Court or in respect of an investigation made by it under that Act pursuant to that request,".

PART 4

Miscellaneous Amendments

Amendment of section 3 of Act of 1946

40. Section 3 of the Act of 1946 is amended in the definition of "trade dispute" by the insertion of "and includes any such dispute or difference between employers and workers where the employment has ceased," after "of any person".

Making of establishment orders

41. The Act of 1946 is amended by the substitution of the following section for section 39:

"39. (1) Where the Court has held, in pursuance of section 38 of this Act, an inquiry into an application for an establishment order, the Court may, subject to section 37 of this Act, if it is satisfied that to do so would promote harmonious industrial relations between workers and employers and assist in the avoidance of industrial unrest, make a recommendation to the Minister in either the terms of the draft establishment order prepared in accordance with section 38 or with such modifications of those terms as it considers necessary.

(2) Where the Court makes a recommendation under subsection (1), it shall forward a copy of the recommendation to the Minister.

(3) As soon as practicable after receipt of a copy of a recommendation under subsection (2), the Minister shall, where he or she is satisfied that subsection (1) has been complied with, and where he or she considers it appropriate to do so, make an order in the terms of the recommendation.

(4) Where the Minister is not satisfied that subsection (1) has been complied with, or where he or she considers that it is not appropriate to make an order in the terms of the recommendation, he or she shall—

(a) refuse to make an order in the terms of the recommendation, and

(b) notify the Court in writing of his or her decision and the reasons for the decision.

(5) An order under subsection (3) may contain such incidental, supplementary and consequential provisions as the Minister considers necessary or expedient for the purposes of the order including, where

the order abolishes a joint labour committee pursuant to a recommendation of the Court, the revocation of an employment regulation order made pursuant to proposals made by the joint labour committee concerned.

(6) Every order under subsection (3) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.".

Amendment of section 40 of Act of 1946

42. Section 40 of the Act of 1946 is amended by the substitution of "may make a recommendation to the Minister to abolish the joint labour committee established by such establishment order or amend such establishment order, and the provisions of section 38 and section 39 (amended by *section 41* of the *Industrial Relations (Amendment) Act 2015*) of this Act shall apply in relation to such application as if the application were an application under section 36." for "may by order abolish the joint labour committee established by such establishment order or amend such establishment order, and the provisions of section 38 and section 39 of this Act shall apply in relation to such application and to the order (if any) made under this section as if the application were an application under section 38 and the order were an establishment order.".

Amendment of section 1 of Industrial Relations Act 1976

43. Section 1 of the Industrial Relations Act 1976 is amended by the substitution of the following definition for the definition of "agriculture":

" 'agriculture' means—

(a) (i) the production of animals, including the production of meat and other animal produce intended for human consumption,

(ii) the sorting and packing of meat and other animal produce, and

(iii) the production, sorting, and packing of crops, including fruit and vegetables, intended for human or animal consumption,

on farm land (within the meaning of section 664 of the Taxes Consolidation Act 1997), and

(b) horticulture, including market gardening, garden nurseries and nursery grounds;".

Amendment of section 23 of Act of 1990

44. The Act of 1990 is amended in subsection (1) of section 23—

(a) by the insertion of "(or, where the employment has ceased, worked under)" after "has entered into or works under", and

(b) by the insertion of the following paragraph after paragraph (c):

"(ca) a teacher employed by an education and training board,".

Time limit in relation to trade dispute where retired worker is party to dispute

45. The Act of 1990 is amended by the insertion of the following section after section 26:

"26A. (1)Notwithstanding any other provision of this or any other enactment, but subject to subsection (2), an adjudication officer or the Court shall not investigate a trade dispute to which a worker who has ceased to be employed by reason of his or her retirement is a party unless—

(a) the dispute was referred to the Commission for conciliation within a period of 6 months from the date on which the worker's employment ceased, or the date on which the event to which the dispute relates occurred, whichever is the earlier, or

(b) the dispute was referred to an adjudication officer or, as the case may be, the Court within the period referred to in paragraph (a).

(2) Notwithstanding subsection (1), an adjudication officer or, as the case may be, the Court may extend the period referred to in that subsection by a further period not exceeding 6 months where the adjudication officer or the Court is satisfied that the failure to refer the dispute within the period referred to in subsection (1) was due to reasonable cause.

(3) The Commission or the Court shall not investigate a trade dispute to which a worker referred to in subsection (1) is a party where the dispute is subject to investigation by the Pensions Ombudsman.".

Amendment of Agricultural Workers Joint Labour Committee Establishment Order 1976

46. The Agricultural Workers Joint Labour Committee Establishment Order 1976 (S.I. No. 198 of 1976) is amended by the substitution of—

"AND WHEREAS by the said section 1 (amended by *section 43* of the *Industrial Relations (Amendment) Act 2015*) of the Act of 1976, 'agriculture' means—

(a) (i) the production of animals, including the production of meat and other animal produce intended for human consumption,

(ii) the sorting and packing of meat and other animal produce, and

(iii) the production, sorting, and packing of crops, including fruit and vegetables, intended for human or animal consumption,

on farm land (within the meaning of section 664 of the Taxes Consolidation Act 1997), and

(b) horticulture, including market gardening, garden nurseries and nursery grounds;"

for "AND WHEREAS by the said section 1 of the Act of 1976 agriculture is defined as including horticulture, the production of any consumable produce which is grown for sale or for consumption or other use, dairy farming, poultry farming, the use of land as grazing, meadow or pasture land or orchard or osier land or woodland, or for market gardens, private gardens, nursery grounds or sports grounds, the caring for or the rearing or training of animals and any other incidental activities connected with agriculture;".

Appendix C:

Final Report of the LEEF High Level Working Group on Collective Bargaining

Final Report of the LEEF High Level Working Group on Collective Bargaining

1. Introduction

The Tánaiste and Minister for Enterprise, Trade and Employment Leo Varadkar TD announced the setting up 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 in Ireland on 30 March 2021. The group was set up to review collective bargaining and the industrial relations landscape in Ireland.

The Tánaiste nominated Professor Michael Doherty, School of Law and Criminology, Maynooth University as Chair of the group.

At its first meeting, the members of the group agreed to focus this review on the below terms of reference:

- Examine the issue of trade union recognition and the implication of same on the collective bargaining processes.
- Examine the adequacy of the workplace relations framework supporting the conduct and determination of pay and conditions of employment, having regard to the legal, economic, and social conditions in which it operates.
- 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 the individual employment rights frameworks and the EU context. It may wish to consider other models of employee relations and pay determination established in other Member States.
- Review the current statutory wage setting mechanisms and, where appropriate, make recommendations for reform.

Membership of High-Level Group on collective bargaining

Chair – Professor Michael Doherty, Maynooth University

Employer representatives:

Mr Danny McCoy, Ibec

Ms Maeve McElwee, Ibec

Mr Tom Parlon, CIF

Employee representatives:

Mr Kevin Callinan, Fórsa

Mr Joe Cunningham, SIPTU

Ms Patricia King, ICTU

Government nominees:

Professor Bill Roche, UCD

Mr John Shaw, Department of the Taoiseach

Ms Clare Dunne, Department of Enterprise, Trade and Employment (until 31.12.2021)

Mr Dermot Mulligan, Department of Enterprise, Trade and Employment (from 1.1.2022)

The Group's first meeting was held on the 16th April 2021 and the Group have met either virtually or in person on 11 occasions. The Group reported back to the Tánaiste in July 2021 (Appendix 1), October 2021 (Appendix 2) and in December 2021 (Appendix 3).

A Public Consultation Process seeking views on proposals being considered by the High-Level Group on Collective Bargaining was held over a three-week period from the 26 May 2022 to the 16 June 2022. Nine Submissions were received in that period.

2. The Context

The Group was tasked with facilitating the examination of the adequacy of the workplace relations framework in supporting the conduct and determination of pay and conditions of employment having regard to the legal, economic, and social conditions in which this framework operates. The Group, of course, largely conducted its work during a global pandemic, unprecedented within living memory. It is clear that a feature of the country's swift response to the impacts of the Covid-19 was the prominence of an active and meaningful form of tripartite social dialogue, through the Labour Employer Economic Forum (LEEF). From the outset, both the ICTU and Ibec were directly involved with the Government in designing a series of work-focused measures that were designed to mitigate the economic and social impacts of the pandemic. This tripartite approach very much grounded the work of the Group.

The Covid-19 crisis also had a significant impact in revealing the true value to society of many lower-income, higher-risk jobs in retail, hospitality, healthcare, social care, public transport, and other services. People working in these jobs were 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 Group carefully considered, throughout its deliberations and in making its recommendations, whether the societal recognition of the essential nature of many of these jobs was adequately reflected in the everyday work experience.

The Group was cognisant of the growing importance to business internationally of the Environmental, Social and Governance (ESG) agenda, and the 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.[1] This model clearly envisages that business leaders and individual companies engage with the needs of their employees as they seek to continue grow the economy in a sustainable manner.

The Group was also asked to examine the issue of trade union recognition including any implications it may have on our collective bargaining processes. In its consideration of the legal and constitutional impediments that may exist in the reform of the current systems, the Group was asked to be cognisant of individual employment rights frameworks and the EU context, including models of employee relations and pay determination established in other Member States.

[1] See, for example, https://corpgov.law.harvard.edu/2020/09/14/the-stakeholder-model-and-esg/.

The Group proceeded in its work on the basis that it was not possible to describe *precisely* the constitutional position in terms of collective bargaining rights, or trade union recognition. The Group heard, in the course of its deliberations, from Labour Law and Constitutional Law experts. During the course of its work, the Group also received some significant legal guidance from the Supreme Court (the NECI case; see below). The Group considered carefully the principal legislation relating to collective bargaining (the *Industrial Relations (Amendment) Acts 2001-2004*, as amended by the *Industrial Relations (Amendment) Act 2015*), and throughout its work the Group had access to expert legal views from the Department of Enterprise, Trade and Employment (DETE).

The Group was cognisant of models of employee relations and pay determination established in other EU Member States, but also considered developments in countries with common law traditions similar to Ireland, such as New Zealand and Australia.

The EU context (particularly proposed EU legislation) was of paramount importance to the Group's work. The European Commission adopted a proposal for a Directive on adequate minimum wages on 28 October 2020.[2] In June 2022, the European Parliament and the Council reached political agreement on the Directive, which, when formally approved by the co-legislators, will enter into force, and will need to be transposed by Member States into national law within two years from that date. A central theme of the proposed Directive is the emphasis on the key institutional role that *collective bargaining* plays in ensuring adequate minimum wage protection for workers; Recital 19 states that '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'. The proposed Directive notes that Member States with high collective bargaining coverage tend to have a low share of low-wage workers and high minimum wages. Therefore, the proposed Directive requires Member States with a collective bargaining coverage rate below 80% to adopt measures with a view to enhancing collective bargaining.[3] Importantly for the work of the Group, the proposed Directive sees an *interdependence* between statutory minimum wages and collective bargaining. Recital 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' (emphasis added).

In terms of its focus on collective bargaining, the Group notes that the obligations under the proposed Directive are for Member States to come up with action plans and frameworks to facilitate

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0682&from=EN.
[3] Ireland's current rate of collective bargaining coverage is approximately 34%.

collective bargaining, and support an increase in bargaining coverage, and that these (and any outcomes) will be subject to ongoing review. The focus of the Group's work has been to propose means by which plans and frameworks, developed by the social partners in conjunction with the State, can be put in place so that Ireland is well-positioned to meet its obligations under EU law.

The Group was asked to review the current statutory wage setting mechanisms and, where appropriate, make recommendations for reform considering the Supreme Court's ruling in the NECI case. The NECI judgment was issued on 18th June 2021, and the Supreme Court upheld the Constitutionality of the legislative framework underpinning Sectoral Employment Orders (SEOs) and confirmed its acceptance that the key objective of the 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.[4] The issue of trade union recognition is noted in the Supreme Court judgement in the NECI case, with a European context for this specifically remarked upon at para. 139 through reference to *Demir and Baykara v. Turkey*.[5] In this case, the European Court of Human Rights observed that the right to bargain collectively with an employer had, in principle, become one of the essential elements of the right to form and join trade unions, for the protection of interests set forth in Article 11 of the Convention. In the Supreme Court judgement, MacMenamin J. observes that collective bargaining is now seen as a recognised feature of the social market within the European Union. The Group has considered carefully the comments of the Supreme Court as part of its wider deliberations on collective bargaining.

The Group has been very mindful of Ireland's impending EU law obligations, described above. It seems clear that any action plan agreed to facilitate collective bargaining, and support an increase in bargaining coverage, would need to encourage and support bargaining at sectoral level. A key legislative mechanism for supporting sectoral collective bargaining already exists in the form of the legislation establishing Joint Labour Committees (JLCs). However, while a minority of JLCs function well at present, the robustness and effectiveness of this statutory mechanism have been impacted by employer disengagement in relation to the operation of the JLC system in a number of sectors. The nature of the JLC system at present means that the non-participation by either side of industry renders an established JLC inoperable. The Group has considered the intention of the Oireachtas (as set out in the *Industrial Relations Acts 1946-2012*), and has carefully examined the 2021 establishment of a new JLC for the childcare sector. The Labour Court's review of JLCs (2018)

[4] *Naisiunta Leictreacht (NECI) V Labour Court & Ors* [2021] IESC 36.
[5] [2008] ECHR 1345.

concluded (anticipating to some extent the proposed EU Directive) 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.[6] Equally, the Group considers that properly functioning JLCs can be an effective, evolving, and flexible system of sectoral regulation, that can contribute to the progressive development of different sectors of the economy, support more sustainable and inclusive high-quality employment, and also help to address other employment relations policy challenges. However, the Group has also been mindful to examine deficiencies in the existing JLC system, and to look for ways to improve the functioning of JLCs, so that the statutory system established secures the confidence of all participants.

The Group has focused throughout its operation on three key areas (identified in early deliberations, and clearly outlined in its interim progress reports):

1. JLCs: promoting mechanisms to increase sectoral coverage of collectively bargained terms and conditions.
2. Measures to improve the functioning of the procedure set out under the *Industrial Relations (Amendment) Acts 2001-2004* (as amended by Part 3 of the *Industrial Relations (Amendment) Act 2015*) to allow trade unions to represent members in relation to terms and conditions of employment, where the employer does not engage in collective bargaining with a trade union or excepted body.
3. A process to encourage and facilitate good faith engagement between trade unions and employers at enterprise level, where a trade union has organised members in the enterprise, but where the employer does not engage in collective bargaining with a trade union or excepted body.

In its final report the Group, mindful of its terms of reference (specifically, to 'examine the adequacy of the workplace relations framework supporting the conduct and determination of pay and conditions of employment'), has also examined the operation of enterprise level collective bargaining, where the employer engages with a trade union or excepted body.

[6] https://www.labourcourt.ie/en/publications/employment-regulation-orders/review-of-joint-labour-committees-master-version-finalt-report-003-002-.pdf.

4. Measures to improve the functioning of collective bargaining at enterprise level.

As noted above, the work of the group has been undertaken very much in the context of upcoming EU law obligations. However, the proposed Directive had not yet been passed into law at the time of writing of this report. There are some aspects of the proposed EU Directive, which the Group did not address (for example, measures on the awarding of public procurement and concession contracts, and easing the access of trade union representatives to workers). The Group recommends that any remaining issues of transposition should be addressed in a similar tripartite manner to those examined in this report.

However, the Group also emphasises that this report, and the recommendations contained herein, should not be considered as the end of a process, but as one element of what will be ongoing efforts to improve the system of industrial relations in Ireland, respecting the autonomy of the social partners, and to continue to build relationships of trust, confidence, and mutual respect between employers and workers and their representatives at all levels (national, sectoral, and local). These efforts should be focused on attempting to resolve any differences through structured engagement between the parties, in line with Ireland's voluntarist tradition, rather than through recourse to the adversarial common law system.

3. Joint Labour Committees

Principle One – Joint Labour Committees (set out in the Progress Update for the LEEF High Level Working Group on Collective Bargaining; Oct 27 2021).

The Group recognises that the legislative intention as set out in the Industrial Relations Act 1946 and updated in the Industrial Relations (Amendment) Act of 2012, is for the Joint Labour Committee (JLC) system to operate effectively as a mechanism for sectoral regulation of pay and conditions through agreement.

The Group acknowledges that the JLC system is not now functioning optimally in this capacity. In light of this, the Group will explore options to increase employer engagement with a modern, evidence-based and consensus- focussed JLC system, responsive to the economic environment, which can ensure this important sectoral bargaining mechanism operates effectively.

In a small number of sectors, JLCs operate as intended, and sectoral social partners engage to formulate Employment Regulation Order (ERO) proposals, which are put to the Labour Court, confirmed by the Minister, and laid before the Oireachtas. However, in many of the sectors in which JLCs have been established they are not functioning. There is employer opposition to the operation of JLCs in most sectors in which they are established for a variety of reasons, which have been clearly outlined in the formal reviews of the system.[7] Two overarching principles have been identified by the Group that are important to address:

- employers' participation *ab initio* in the JLC process;
- increasing the confidence of all the social partners in the operation of the JLC system.

Incentivising Employer Engagement

There are six stages to the making of an ERO: -

1. Negotiation at a JLC;
2. Making a proposal for an ERO. If agreement is not reached, the *Industrial Relations (Amendment) Act 2012* provides a mechanism by which the matter can be referred to

[7] See, for example, Labour Court Review of JLCs 2018 (https://www.labourcourt.ie/en/publications/employment-regulation-orders/review-of-joint-labour-committees-master-version-finalt-report-003-002-.pdf).

the Labour Court, which makes a recommendation. If the recommendation is not accepted, it can be adopted on the casting vote of the Chair of the JLC;

3. Where the committee adopts proposals, a draft ERO is referred to the Labour Court and can be adopted following a public enquiry;
4. The draft is submitted to the Minister;
5. The draft is laid before both houses of the Oireachtas;
6. Unless the draft is annulled by a resolution of the Oireachtas the ERO becomes law.

At present, most EROs fall at the first stage, as employer representatives do not attend JLCs to participate in formulating proposals, or where they do, agreement cannot be reached at the negotiation stage. The Court, in its 2018 Review, noted, on several occasions that 'the fact that the JLC has not met deprives the Court of an opportunity to assess the current relevance or value of the JLC on an evidential basis'.[8]

The Group has considered how this issue of non-participation of employer representatives may be addressed. In this context, the Group has been mindful of:

- the intention of the Oireachtas that a functioning JLC system should operate (see the *Industrial Relations Acts 1946-2012*);
- the requirements of the proposed EU Directive on Minimum Wages (Article 4) that Member States with a collective bargaining coverage below a threshold (80%) shall provide for *a framework of enabling conditions for collective bargaining*, either by law after consultation of the social partners or by agreement with them (emphasis added); Member States (with the involvement of the social partners, and in accordance with national laws and practice, are required to promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage setting, *in particular at sector or cross-industry level (emphasis added)*;
- The decision of the Supreme Court in the NECI case, which found the Sectoral Employment Order (SEO) system to be constitutionally sound.[9]

Where employers abstain from participating in a JLC, the statutory process established by the Oireachtas is rendered inoperative. One key incentive to participation is to establish a process for proceeding with a ERO in the event employers, in accordance with fair procedures, are given all reasonable opportunity to engage, but decline to do so.

[8] Labour Court Review of JLCs 2018 (https://www.labourcourt.ie/en/publications/employment-regulation-orders/review-of-joint-labour-committees-master-version-finalt-report-003-002-.pdf).
[9] *Naisiunta Leictreacht (NECI) V Labour Court & Ors* [2021] IESC 36.

The Group believes that this issue could be addressed by allowing the first stage in the process (above) to be bypassed in circumstances where employer representatives fail to make nominations to the JLC. In such circumstances, a process (somewhat analogous to that used in the making of SEOs) would kick-in, whereby the Labour Court would be charged with drafting an ERO for consideration by the Minister, where drafting such an order is in the best interests of the sector. Where such a situation arises, the Labour Court must ensure that the ERO is compliant with the pre-conditions set down in s42A of the 1946 Act (as inserted by the 2012 Act) to which a JLC would have been required to adhere in drafting an ERO. This is in addition, of course, to the preconditions to which the Labour Court must already adhere under s42B of the 1946 Act (as inserted by the 2012 Act).

A second scenario should also be considered. Where employers engage in a JLC, and the JLC fails to adopt or formulate proposals, and no further progress can be made, currently the matter can be referred to the Labour Court for a recommendation. The proposal set out here is that, where the JLC still fails to adopt the proposals following the Labour Court's recommendation, the Labour Court, where it deems it in the best interests of the sector, can finalise the process by drafting an ERO for consideration by the Minister. The Group recognises the legal requirement (based on the NECI and McGowan cases) that the Labour Court would not be entitled, under this proposed process, to simply 'rubber stamp' any partial agreements at the JLC. The case law is clear that the Labour Court must ensure every ERO (including those formulated by the Court) be compliant with the statutory requirements set out in the 1946 Act (as amended). However, in this scenario, where partial agreement may have been reached at the JLC, the Court could be requested to engage with, and give due notice to, any matters which were the subject of agreement at the JLC. The aim is to ensure, as much as possible, that views expressed during negotiations are reflected in the Labour Court's recommended ERO, while in no way detracting from the requirement of the Court to ensure its proposals are compliant with the relevant legislation.

In either scenario (bearing in mind the comments of the Supreme Court in NECI) it would be important to ensure that employer representatives in the sector would have adequate opportunities to participate in the process, and that all interested parties would have a right to be heard. This should involve, for example:

- An initial invitation to employer representatives to attend, and participate in, JLC negotiations;

- Where nominations are not made or an invitation is not accepted, having been requested or issued by the Labour Court, the Labour Court must give employers a further opportunity to nominate or attend, making it clear that failure to nominate or attend will result in the Labour Court formulating proposals;
- In the event of the failure of such a process, the Labour Court would formulate a draft ERO. Before finalising the ERO, and having published the draft ERO as currently required, the Labour Court will be required to invite submissions from all parties and schedule a hearing, for those parties who wish to be heard.[10]
- Any proposals submitted by the Court would need to comply with the requirements currently set down in section 42A of the *Industrial Relations Act 1946*, as inserted by *the Industrial Relations (Amendment) Act 2012*, that the JLC would normally ensure are met before submitting proposals to the Labour Court. In essence, the Labour Court would be subject to the preconditions to which the JLC would normally be required to adhere, and the Labour Court would be subject to all requirements imposed on JLCs to take account of any written submissions, representations, or documents received in relation to the subject matter of the proposals.

If the nominated employer representatives have been offered several opportunities to participate in the JLC process, but decline to do so, the Labour Court would formulate a draft ERO for submission to the Minster, who would lay the Order before the House in accordance with the legislative scheme.

It is envisaged that the mere existence of such a process would act as an incentive to employers to participate in the JLC process at the earlier stages (rather than abstain). In this regard, the Group emphasises that the principal objective here is to *promote and facilitate collective bargaining*, in accordance with the upcoming EU law obligations.

Improving the Functioning of JLCs

A key objective is to increase confidence (of all the sectoral social partners) in the operation of the JLC system. In this regard, the Group has considered a number of issues:

[10] Where an ERO is drafted by the Labour Court, it must be published in the normal manner and employers must be given sufficient opportunity to make submissions and be heard before the Labour Court before the ERO is finalised. Section 42B(12) of the Industrial Relations Act 1946 (as inserted by the 2012 Act) currently provides that the Labour Court, where it is considering the making of a recommendation following the failure of a JLC to agree proposals 'may, where it considers it appropriate to do so, hear all parties appearing to the Court to be interested and desiring to be heard'. The Group believes that this should be amended so that a hearing must be held where a party requests one.

1. Establish panels of technical assessors (which the Court can appoint under the 1946 Act) which can aid the JLCs in complying with their statutory requirements under the IR Acts (e.g. to consider competitiveness, wage rates in comparable sectors/ other jurisdictions, etc). Such a panel could also be used to assist the Court, in the event the Court seeks to formulate draft proposals for an ERO. This panel could be established by the Court, in consultation with the social partners, and its members would require sector specific knowledge.

2. The make-up and membership of JLCs. The Group recommends expanded and specific training be provided to JLC Chairs, and a review be carried out of the qualifications required for appointment; for example, Chairs could be appointed from the ranks of the WRC Adjudicators. Consideration might also be given to the allocation of more seats at the JLCs to have better representation of employers and employees across the sector, and to the rotation of nominees on the JLCs.

3. Establishment of JLCs. Under Section 37 of *Industrial Relations Act 1946* an establishment order may only be made where the Court is satisfied:

(a) in case the application is made by an organisation or a group of persons claiming to be representative of such workers or such employers, that the claim is well-founded, and
(b) that either—

(i) there is substantial agreement between such workers and their employers to the establishment of a joint labour committee, or

(ii) the existing machinery for effective regulation of remuneration and other conditions of employment of such workers is inadequate or is likely to cease or to cease to be adequate, or

(iii) having regard to the existing rates of remuneration or conditions of employment of such workers or any of them, it is expedient that a joint labour committee should be established.

The Group believes it is important to clarify and refine the scope of the sectors in which JLCs might be established in the future, to ensure that they are established within sectors of the type traditionally envisaged by the 1946 Act, and the Group recommends an examination of whether section 37 currently meets that purpose.

4. Other Policy/ legal changes.

In the context of overall reform of the JLC system, the Group recommends the consideration of other policy/ legal changes which could be made to incentivise participation in JLC mechanisms, by providing certain benefits to those operating in regulated sectors. These could include commitments to engage on certain matters; for example, on labour supply issues in certain sectors; on the current mechanisms by which employers can seek temporary exemptions from the terms of EROs under section 48A of the IR Act 1946 (as inserted by the 2012 Act); and on the grounds on which an ERO can be revoked or amended under section 42A of the IR Act 1946 (as inserted by the 2012 Act), and any resulting impact on the employee's contract of employment.

5. The Industrial Relations Acts 2001-2004 (as amended by Part 3 of the Industrial Relations Act 2015).

Principle Two – Referral of Disputes to the Labour Court under Part 3 of the *Industrial Relations (Amendment) Act 2015* (set out in the Progress Update for the LEEF High Level Working Group on Collective Bargaining; Oct 27 2021).

The Group intends to address some of the challenges encountered by parties referring disputes to, or defending disputes at, the Labour Court under Part 3 of the 2015 Act. In particular, the Group will examine the provision of expert means to assist the Labour Court in independently assessing and verifying economic and comparator data for the parties.

The process for referring disputes to the Labour Court under Part 3 of the *Industrial Relations (Amendment) Act 2015* has been only rarely utilised since the entry into force of the Act. The Group has identified difficulties for trade unions referring claims, and employers in defending claims, under the legislation. These relate, significantly, to difficulties in establishing the comparisons required under the legislation. Section 5 (3) of the 2001-2004 Acts (as amended by Part 3 of the 2015 Act) states that:

> The Court shall not make a recommendation providing for an improvement in the remuneration and conditions of employment of a grade, group or category of worker unless it is satisfied that the totality of the remuneration and conditions of employment of the workers concerned provides a lesser benefit to the workers concerned having regard to the totality of remuneration and conditions of employment of comparable workers employed in similar employments.

There are three points of comparison to be made:

A. That the workers are 'comparable workers' (the job);
B. That the workers work in 'similar employments' (the organisation);
C. The workers concerned must benchmark themselves against the totality of remuneration and conditions of employment in the comparator organisations.

There are corresponding difficulties for those taking and defending claims, and for the Labour Court in assessing claims before it:

A. Precise data on the types of jobs done may be difficult to establish where the named comparator(s) are not party to the dispute and have no reason, incentive, or obligation to supply any information;
B. It may be difficult to obtain organisational information on named comparator(s) not party to the dispute, where such comparator(s) have no reason, incentive, or obligation to supply any information;
C. Terms and conditions of employment clearly constitute commercially sensitive information. Named comparator(s) not party to the dispute have no reason, incentive, or obligation to supply any information (and, in fact, are likely to have an interest in not doing so for commercial and industrial relations reasons).

Technical Assessors

The Group recognises that these obstacles are significant for trade unions taking claims under the Act, and employers seeking to defend such claims. Under section 14 of the *Industrial Relations Act 1946*, the Labour Court may appoint technical assessors to assist it on any matter relating to proceedings before the Court. The Group believes that increased use of this power may be significant in assisting the Court in proceedings under the 2001-2004 Acts (as amended).

While it remains for the parties themselves to make their respective cases to the Labour Court, technical assessors, with sectoral expertise in the sector in which the dispute arises, could be an aid to the Court in preparing opinions, if directed to do so by Court itself, in relation to the points of comparison outlined above. Technical assessors could utilise all available data sources (these could include, for example, CSO data, Revenue real-time sources, etc).

It seems clear that technical assessors should not be required In every claim under the legislation, and it would be for the Court alone to decide if technical assessors are required, on a case-by-case basis.

In proceedings under the legislation, an opinion furnished by technical assessors could certainly aid the Court, at recommendation stage, in coming to a view on the balance of probabilities.

Other potential benefits of using technical assessors include:

- Where a claimant nominates multiple comparators, technical assessors could be charged with assessing the validity of those comparators and furnishing an opinion to the Court.
- In certain circumstances, representative groups could obtain data to aid in comparisons, which could only, however, be used in an anonymised way (for reasons of commercial sensitivity). Technical assessors could be empowered to validate such data on the Court's behalf.

6. Good Faith Engagement at Enterprise Level

Principle Three – Good Faith Engagement at the Enterprise Level (set out in the Progress Update for the LEEF High Level Working Group on Collective Bargaining; Oct 27 2021).

The current wording of the Draft EU Directive on the Minimum Wage includes a requirement for Member States, where collective bargaining coverage is less than 80%, to provide for a framework of enabling conditions for collective bargaining and the establishment of an action plan to promote collective bargaining.*

This sits alongside growing European and International legal and policy momentum towards re-examining how employers and trade unions engage on matters of mutual interest.

The Group is also cognisant of a global trend towards incorporating strong environmental, social and corporate governance into business models.

Taking account of these developments, whilst at all times remaining conscious of the voluntarist framework of industrial relations in Ireland,

The Group will explore a means to promote good faith engagement between employers and workers at the level of the enterprise, where a substantial proportion of employees are represented by a trade union and without prejudice to any outcome of such engagement.

*(*changed to 80% in the agreed draft of June 7 2022).*

The Current Position

In its interim report to the Tánaiste in October 2021, the Group committed to explore a means to promote good faith engagement between employers and workers at the level of the enterprise. The Group has considered the position of employees, who are members of a trade union and wish to be represented by their union in negotiating terms and conditions of employment, in situations where the employer does not engage in collective bargaining with the trade union at enterprise level. At present, the options open to trade unions and their members in this position are:

1. Seek a Labour Court recommendation under section 20 of the *Industrial Relations Act 1969*: any such recommendation is binding on the trade union referring the claim, but not on the employer. In essence, any recommendation is not enforceable against the employer.

2. Invoke the process under the *Industrial Relations Acts 2001-2004* (as amended in 2015): This process can result in a binding Labour Court determination, which can directly set legally binding terms and conditions of employment.

Therefore, under the 1969 Act, any recommendation by the Labour Court (including a recommendation that the employer should recognise the trade union for collective bargaining purposes) is wholly unenforceable by the referring trade union. Under the 2001-2004 Acts (as amended), by contrast, an employer can have terms and conditions of employment imposed upon it by order of the Labour Court, and enforced by the Circuit Court.

The Group has considered a means to promote engagement between employers and trade unions, which cannot be disregarded by either party, but, equally, does not result in the imposition by a third-party of any outcome, once a considered and reasoned response has been furnished in line with the process outlined below. At all times the Group is cognisant both of the voluntarist tradition of Irish industrial relations, and of the requirements of the Draft EU Directive on Adequate Minimum Wages. The draft Directive, on which provisional agreement has been reached (June 7th 2022) between the Council and the European Parliament, foresees that where the collective bargaining coverage rate is below the threshold of 80%, Member States should establish an action plan to promote collective bargaining. The action plan should set out a clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage.

Good Faith Engagement

The Group takes as a starting point, in exploring means to facilitate and promote good faith engagement, two guiding principles:

- It is neither possible nor desirable to seek any mechanism by which parties can be obliged to reach an agreement.
- Trade union members should not have their membership rendered nugatory (in line with the jurisprudence of the European Court of Human Rights).

The view of the Group is that there is nothing inconsistent about encouraging parties to engage with one another, in good faith – and imposing an obligation upon them to try to do so – but at the same time not compelling parties to reach any outcomes or agreement.

A Proposed Process for Good Faith Engagement

1. The process is triggered by a written request from a trade union to an employer, to engage with the trade union in relation to the rates of pay and/or terms and conditions of employment of the grade, group or category of workers to which the request relates.

2. The trade union must establish a threshold of membership amongst the specific grade, group or category of workers employed by the employer. The Group notes that, under the *Employees (Information and Consultation) Act 2006*, which obligates employers with more than fifty employees to establish arrangements for consultation with, and the provision of information to, employees, the threshold is set at 10% (subject to a minimum of 15, and a maximum of 100, employees). The Group does not wish to exclude employments with fewer than 50 employees from the scope of this process. Therefore, the Group believes it appropriate, whilst noting the 2006 Act threshold, to avoid setting a strict percentage or numerical threshold; the level of membership required, for example, could be one that is 'meaningful' (leaving it to Labour Court to develop, through any recommendations it might issue, guidance on this term).

   The levels of membership amongst the grade, group or category of workers employed by the employer may be determined in the same manner as the process set out in section 2A of the *Industrial (Amendment) Acts 2001-2004* (as amended) requiring a statutory declaration to be made by the chief officer of the trade union which made the request, which can be confirmed by the Labour Court to its satisfaction.

3. Where the employer does not accede to the request for a good faith engagement, the matter can be referred to the Labour Court for investigation.

   The Court shall decline to conduct an investigation into a request for good faith engagement where it is satisfied that the employer is already engaged in collective bargaining with a recognised trade union or a properly constituted excepted body.

4. The employer and the trade union engage in good faith (see also the Appendix to this section):

a. A good faith engagement meeting will be held within a defined time period (normally 30 days from the receipt by the employer of the trade union's request), ensuring that the timeframe allowed for the meeting itself is appropriate;
b. A clear agenda outlining the key representations to be made must be furnished by the trade union in advance of the meeting, if these are to be considered in the written response;
c. The good faith engagement meeting should be attended by the relevant level, and number, of management and trade union representatives, depending on the key representations outlined in the agenda furnished;
d. The employer will give genuine consideration to the key representations set out by the trade union in the agenda furnished, and discussed at the meeting itself;
e. The employer will furnish the trade union with a clear, considered, and reasoned response, in writing, to the key representations made, within a period that is reasonable having regard to all the circumstances;
f. Each party will be afforded an opportunity to obtain reasonable clarifications solely regarding the key agenda items discussed and/ or the written response furnished.

5. The trade union will not have recourse to industrial action once the good faith engagement process has been triggered.

6. A trade union may complain to the Labour Court that an employer has failed to engage with it in good faith in accordance with point 4. The Labour Court shall give the parties an opportunity to be heard and decide whether the complaint is, or is not, well-founded. If the Labour Court finds that the complaint is well-founded, it may make a recommendation setting out what the employer should do in order to comply with the good faith engagement obligation under this process (including the timeframe within which any measures should be taken). Whether a recommendation is made to have a good faith engagement is a matter entirely at the discretion of the Labour Court, taking into account all the circumstances of the case.

7. A trade union may complain to the Labour Court, within six weeks of the Labour Court issuing its recommendation, that there has been a failure to comply with the recommendation. The Labour Court shall give the parties an opportunity to be heard and decide whether the complaint is, or is not, well-founded. If the Labour Court finds that the complaint is well-founded, it may make a determination setting out what the employer

should do in order to comply with the good faith engagement obligation under this process (including the timeframe within which any measures should be taken). Whether a determination is made to have a good faith engagement is a matter entirely at the discretion of the Labour Court, taking into account all the circumstances of the case.

8. Where there is a failure to comply with the terms of a determination, within the period specified, a trade union may make an application to the Circuit Court. The Circuit Court shall, without hearing the employer or any further evidence, make an order directing the employer to carry out the determination in accordance with its terms.

9. Failure to comply with such an order of the Circuit Court is an offence, and a person guilty of such an offence will be subject to a pecuniary penalty.

10. The trade union may not make any further application to the Labour Court for a good faith engagement for a period of three years.

Appendix: Elements of Good Faith Engagement

Suggested elements of good faith engagement (this a non-exhaustive and indicative list):

- attending, and participating in, any meeting within a reasonable timeframe;
- giving genuine consideration to representations made by the other party;
- providing any relevant information (other than confidential or commercially sensitive information) in a timely manner;
- giving a clear, considered, and reasoned written response to representations made by the other party following a good faith meeting within an agreed timeframe;
- the parties should be responsive, and must not do anything likely to mislead or deceive each other;
- the size, composition and representative nature of the trade union and employer representatives should be reasonable and balanced between the parties;
- refraining from capricious or unfair conduct (this could include, for example, refusing to meet, or discuss, with properly nominated representatives of the other party; penalisation of an employee due to trade union activity; interfering with the process of the parties' nomination of their independent representatives; unduly hurrying the engagement to prevent proper consideration; taking extreme positions with the intention of shutting down the engagement).

- Each party should be responsible for making its own record of discussions held.

Good Faith Engagement does not require that parties reach agreement on any of the subject(s) under consideration.

6. Collective Bargaining at Enterprise Level

Under the Irish voluntarist industrial relations model, trade unions and employers are free to bargain and conclude collective agreements at enterprise level on such terms as they choose (subject to legislative requirements on certain terms and conditions of employment, such as minimum wage rates, non-discrimination, etc). Most, if not all, enterprise collective agreements tend to include dispute resolution provisions. The State's third-party dispute resolution bodies (the Workplace Relations Commission- WRC- and the Labour Court) are available to aid parties, should one or other, or both, parties request assistance. The Conciliation service of the WRC provides the initial assistance to parties who request this; where a dispute cannot be resolved, the Conciliation Officer may declare that no further progress can be made. In such circumstances, the parties can make a joint request for the assistance of the Labour Court.

Under section 20 of the *Industrial Relations Act 1969*, the parties can make a joint request to the Labour Court to investigate a dispute and undertake, before the investigation, to accept any recommendation issued by the Court.

Furthermore, under section 20 of the 1969 Act, workers concerned in a trade dispute, or their trade union(s), can request the Court to investigate and make a recommendation. Any such recommendation is binding on the workers/ trade unions, but not the employer.

The Group has considered how the current system might be improved in order to function more smoothly for parties involved in collective bargaining processes.

Training

The Group believes that constructive and efficient collective bargaining processes require support for those, on all sides, engaging in such processes. In particular, the Group recommends allocation of funding, under the *National Training Fund Act 2000*, which can be accessed by trade unions and employers. Providing training in the practice of collective bargaining will not only increase the efficiency and effectiveness of the process but may encourage greater take-up of collective bargaining opportunities.

A Proposed Code of Best Practice on Enterprise Collective Bargaining.

The Group recommends the development of a Code of Best Practice on Enterprise Collective Bargaining (pursuant to section 20 of the *Workplace Relations Act 2015*). Elements of such a code might include the following.

1. The overarching principle that disputes should be resolved as close to the workplace as possible (i.e., at local level);
2. Discussions on matters in dispute at local level should be concluded within a period that is reasonable having regard to all the circumstances. Parties at local level should commit to, at all points, moving negotiations forward in a timely and efficient manner;
3. Parties will commit to making the bargaining process as timely and efficient as possible. In particular, parties will commit to avoiding any unreasonable delays in, or placing unreasonable obstacles to, progressing negotiations, including availability of officials on all sides;
4. Relevant information (other than confidential or commercially sensitive information) should be provided by both parties in a timely and efficient manner;
5. The representatives for both parties should be at the appropriate level to engage in negotiations effectively, depending on the subject(s) under consideration, and, at all times, should have access to relevant decision-makers;
6. Where a local process has reached a point where the parties feel no further progress can be made, parties will endeavour to identify any key points of agreement and any key points of remaining dispute;
7. Where the parties seek the assistance of the WRC, the parties should be able to present the Commission with a reasonable level of clarity as to the nature of the subject(s) in dispute. In such circumstances, any progress made at local level should not be abandoned such that subject(s) on which there is some level of consensus are 're-opened' before the WRC;
8. Parties embarking on a conciliation process at the WRC should commit to, at all points, moving the process forward in a timely and efficient manner. Parties will endeavour to commit to agreed timelines at the outset of the WRC process;
9. Parties will commit to avoiding any unreasonable delays in, or placing unreasonable obstacles to, progressing negotiations at the WRC;
10. The representatives for both parties should be at the appropriate level to engage in the conciliation process effectively, depending on the subject(s) under consideration and, at all times, should have access to relevant decision-makers;

11. Where a conciliation process at the WRC has reached a point where the Conciliation Officer and/ or the parties feel that no further progress can be made, the parties will endeavour to identify any key points of agreement and any key points of remaining dispute. Where the parties seek the assistance of the Labour Court, the parties should be able to present the Court with a reasonable level of clarity on the remaining areas in dispute;
12. The Labour Court, in deciding to investigate or make any recommendation in relation to a dispute referred to in point 11 (including disputes referred to the Court under the 1969 Act) shall be satisfied that both parties have observed the obligation to move negotiations forward in a timely and efficient manner throughout the process;
13. Normal industrial relations protocols will continue to apply, such that no industrial action will be undertaken while processes in the WRC or Labour Court are ongoing.

7. Conclusions

The Group considers this report to contain a package of recommendations, which, if implemented in full, will improve the functioning of collective bargaining, and will improve the industrial relations landscape in Ireland. The recommendations will also ensure Ireland is well placed to fulfil upcoming EU law obligations, in a meaningful way, and in the context of a genuine tripartite approach, which respects the autonomy of the social partners.

The Group recommends that the implementation of the recommendations contained in this report by subject to formal, and ongoing, review. The Labour Employer Economic Forum (LEEF) will continue to provide a structure for tripartite dialogue, between Government, Employers, Trade Unions, on economic and employment issues as they affect labour relations. In this context, the Group recommends that the LEEF should oversee implementation of the recommendations contained in this report, including formal review of their impact. It should also provide a forum for tripartite consideration of related workplace issues, including, aspects of the proposed EU Directive not addressed by the Group in this report.

Appendix One

Mr Leo Varadkar, T.D.

Tánaiste and Minister for

Enterprise, Trade and Employment

23 Kildare St

Dublin 2

D02 TD30

29 July 2021

Interim Report of the LEEF High Level Working Group on Collective Bargaining

Dear Tánaiste,

On 30 March this year, the Government 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 in Ireland.

On my appointment as Chair to this Group, I was tasked with facilitating the examination of the adequacy of the workplace relations framework in supporting the conduct and determination of pay and conditions of employment having regard to the legal, economic, and social conditions in which this framework operates. The Group was also asked to examine the issue of trade union recognition including any implications it may have for our collective bargaining processes.

In its consideration of the legal and constitutional impediments that may exist in the reform of the current systems, the Group was asked to be cognisant of individual employment rights frameworks and the EU context, including models of employee relations and pay determination established in other Member States.

Finally, the Group was asked to review the current statutory wage setting mechanisms and, where appropriate, make recommendations for reform considering the Supreme Court's ruling in the NECI case. The NECI judgment was issued on 18th June and the Supreme Court has now upheld the Constitutionality of the legislative framework underpinning the Sectoral Employment Orders and confirmed its acceptance that the key objective of the 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.

The issue of trade union recognition is noted in the Supreme Court judgement in the NECI case, with a European context for this specifically remarked upon at para. 139 through reference to Demir v. Turkey. In this case, the European Court of Human Rights observed that the right to bargain collectively with an employer had, in principle, become one of the essential elements of the right to form and join trade unions, for the protection of interests set forth in Article 11 of the European Convention on Human Rights. In the judgement, MacMenamin J. observes that collective bargaining is now seen as a recognised feature of the social market within the European Union. The Group will consider the comments of the Supreme Court in this regard as part of its wider deliberations on collective bargaining.

The Group, in its terms of reference, committed to consulting with all relevant stakeholders at appropriate times and it should be noted that our work has already generated a considerable element of external interest and scrutiny. Whilst the mechanism to take the views of interested parties on board is yet to be agreed, it is clear that some element of consultation will be required.

Interim Report on Work to Date

The Group has met four times to date and an update on its work was provided for the information of the LEEF Plenary on 5th July.

The Group held its first meeting on 16 April 2021. At its second meeting on 21 May, the Group considered a position paper setting out the current legislative framework for industrial relations in Ireland with a view to establishing any gaps and developing a consensus around an approach to address these.

Following a positive and productive high-level discussion it was agreed that a number of the issues raised could best be explored through a series of bilateral discussions between members of the Group, the Chair and a DETE official from the Secretariat.

These bilateral discussions have facilitated broader consideration of some options for the work programme. The outputs have been discussed at the third meeting of the Group on 5th July and agreement has been reached that a draft interim report would be finalised by the Group at its fourth meeting during the last week in July. A further series of bilateral engagements will be held in August and early September to progress each element of the work programme.

Future Work Programme

There is general agreement amongst the Group that in order to increase our national collective bargaining coverage, looking towards the 70% ambition set out in the European Commission's Draft Directive on the Minimum Wage, the effectiveness of our existing sectoral bargaining and wage setting mechanisms must be examined and any reforms required identified and progressed.

This work is informed by the Supreme Court judgement in the NECI case which provided important clarification and guidance to the Group and has influenced its decisions on the work programme.

In order to increase Ireland's collective bargaining coverage through either of our sectoral bargaining systems - SEOs or EROs (arising from the JLC process) – and at enterprise level, the Group will focus on the following elements which will form the basis of its final report.

1. National Economic and Social Council (NESC) Research

Recognising legislative moves at the level of the EU, and internationally (notably in the USA) and non-legislative developments (for example, in the area of Environmental, Social, and Governance – ESG - stakeholder engagement), the group has asked NESC to prepare a short independent research paper which will set out the context for the work of the Group. This will focus on recent European and international moves to look more closely at how employers and trade unions engage on matters of mutual interest and the possible implications of this for Ireland.

2. Enhancing Sectoral and Enterprise Level Bargaining Mechanisms

Methods to increase sectoral bargaining coverage and encourage meaningful participation by both workers and employers in the existing SEO/ERO processes will be examined through a further series of bilateral engagements in the coming weeks. The issue of trade union recognition will also be explored during the course of these bilaterals.

3. Reform of Industrial Relations (Amendment Act) 2015

The Group is considering whether there may be a potential deficiency in the IR (Amendment) Act 2015 which relates to the requirement to provide comparator data for remuneration and terms and conditions when referring a dispute to the Labour Court. The Group has agreed to consider Part 3 of the IR Act at its September meeting.

Assessment of Progress

Whilst there is clear commitment and a strong level of goodwill on all sides to advance the work of the Group, it should be acknowledged that participation in these deliberations is not without its challenges for both trade union and employer representatives. It is important to recognise the leadership required to establish the Group and the positive and constructive engagements held to date by all members.

I believe that both the trade union and employer representatives on the Group generally accept that the current system of collective bargaining is not functioning optimally for a variety of reasons and recognise the need for a shift from the *status quo*. That being said, in order to advance our common agenda, movement will be required from all sides. As is reflected in the Terms of Reference, due consideration will also need to be given to the economic as well as the social implications of the recommendations of the Group particularly in light of various evolving external factors.

I do not underestimate the difficulty of this work, but I am strongly of the view that amongst the members there is an awareness of the need for significant change and a serious intent to reach a mutually agreed and workable system, which will increase collective bargaining coverage and provide meaningful benefits not only to workers and employers but Irish society as a whole.

Timeline for Conclusion

The Group has committed to submitting a further progress report to you by the end of October with a view to agreeing a final report as soon as possible thereafter.

I am available to arrange a meeting with you should you consider it useful to discuss any elements of this report or the work of the Group in more detail.

Yours sincerely,

_____

Prof Michael Doherty

Head of Department of Law

Maynooth University

Appendix Two

Mr Leo Varadkar, T.D.

Tánaiste and Minister for

Enterprise, Trade and Employment

23 Kildare St

Dublin 2

D02 TD30

27 October 2021

Progress Update for the LEEF High Level Working Group on Collective Bargaining

Dear Tánaiste,

In my letter to you of 29 July I set out the Interim Report of the LEEF High-Level Group on Collective Bargaining and committed to providing you with a further progress update by the end of this month.

The Group has met twice since the submission of the Interim Report to you at the end of July and I have also held a series of bilateral engagements with the members.

This work has led to the development of three principles which could result in meaningful reform of collective bargaining and industrial relations in the State. These are:

Principle One – Joint Labour Committees

The Group recognises that the legislative intention as set out in the Industrial Relations Act 1946 and updated in the Industrial Relations (Amendment) Act of 2012, is for the Joint Labour Committee (JLC) system to operate effectively as a mechanism to promote the sectoral regulation of pay and conditions through agreement.

The Group acknowledges that the JLC system is not now functioning optimally in this capacity. In light of this, the Group will explore options to incentivise employer engagement with a modern, evidence-based and consensus- focussed JLC system, responsive to the economic environment, which can ensure this important sectoral bargaining mechanism operates effectively.

Principle Two – Referral of Disputes to the Labour Court under Part 3 of the Industrial Relations (Amendment) Act 2015.

The Group intends to address some of the challenges encountered by parties referring disputes to, or defending disputes at, the Labour Court under Part 3 of the 2015 Act. In particular, the Group will examine the provision of expert means to assist the Labour Court in independently assessing and verifying economic and comparator data for the parties.

Principle Three – Good Faith Engagement at the Enterprise Level

The current wording of the Draft EU Directive on the Minimum Wage includes a requirement for Member States, where collective bargaining coverage is less than 70%, to provide for a framework of enabling conditions for collective bargaining and the establishment of an action plan to promote collective bargaining.

This sits alongside growing European and International legal and policy momentum towards re-examining how employers and trade unions engage on matters of mutual interest.

The Group is also cognizant of a global trend towards incorporating strong environmental, social and corporate governance into business models.

Taking account of these developments, whilst at all times remaining conscious of the voluntarist framework of industrial relations in Ireland,

The Group will explore a means to promote good faith engagement between employers and workers at the level of the enterprise, where a substantial proportion of employees are represented by a trade union and without prejudice to any outcome of such engagement.

The careful drafting of these principles reflects the challenging and complex nature of Ireland's voluntarist industrial relations tradition. Delivering outputs which would restore the JLC system to its intended operation, assist parties in bringing disputes to the Labour Court and ensure good faith engagement between workers and employers, would be very significant progress.

It should be acknowledged that reaching agreement on these outputs is difficult for both trade union and employer representatives. That being said, it is the stated intention of the Group to develop these principles into concrete actions which will form the basis of a final report to you as soon as practicable. To assist in this process, the Group will have recourse to research prepared for it by the Secretariat to the National Economic and Social Council (NESC) along with access to an expert in Constitutional and Employment Law.

The Group is also aware that its Terms of Reference commit to consulting with all relevant stakeholders at appropriate times and I believe that this should now proceed on the basis of the three principles set out above. This focused stakeholder consultation, organised and facilitated by the Chair, will be conducted within a four-week period and the outcomes will feed into the Group's deliberations before agreeing a Final Report which will be submitted to you for consideration by Government. If this is not possible before the end of this year, it will be as early as possible in 2022.

I am available to arrange a meeting with you should you consider it useful to discuss any elements of this progress update or the work of the Group in more detail.

Yours sincerely,

_____

Prof Michael Doherty

Head of Department of Law

Maynooth University

Appendix Three

21 December 2021

Mr Leo Varadkar, T.D.

Tánaiste and Minister for

Enterprise, Trade and Employment

23 Kildare St

Dublin 2

D02 TD30

End of Year Update for the LEEF High Level Working Group on Collective Bargaining

Dear Tánaiste,

In my letter to you of 28 October I set out a Progress Update on the work of the LEEF High-Level Group on Collective Bargaining following on from the Group's Interim Report in July.

The Group has met eight times in total since it was established in March of this year and I have also held a series of extensive bilateral engagements with the members. The Group has also had recourse to research prepared for it by the Secretariat to the National Economic and Social Council (NESC) along with presentations from two experts in Constitutional and Employment Law – Tony Kerr, S.C. and Professor Gerald Whyte of Trinity College. Two updates have been provided to the LEEF Plenary on the work of the Group.

As I informed you in October, we have developed three principles which could result in meaningful reform of collective bargaining and industrial relations in the State.

These aim to restore the Joint Labour Committee (JLC) process to its intended operation, as set out in the Industrial Relations Acts; to allow the Labour Court to appoint technical assessors to assist workers or employers in referring disputes to it under the Industrial Relations (Amendment) Acts 2001-2015 and to explore ways in which good faith engagement between workers and employers at enterprise level could be facilitated.

The discussions to date have led to broad consensus on the appointment of technical assessors with the fine detail around this process to be finalised in January. The issues around the JLCs and enterprise engagement will require considerably more work and dialogue early next year.

Whilst the work of the Group to date has not been without its challenges, I am of the view that there is considerable willingness on the part of both the union and employer representatives to agree to concrete actions for each of the three principles, which would effect real change to our industrial relations and collective bargaining landscape.

As I set out in my last update, I intend to conduct a focused stakeholder consultation in the coming weeks, the outcomes of which will feed into the Group's deliberations, before agreeing a Final Report which will be submitted to you for consideration by Government as early as possible in 2022.

Finally, I'd like to take this opportunity to express my thanks to all the Group's members for their constructive engagement with the process and for the time and effort they've invested in our work to date.

I'd also like to record my appreciation for the work of Clare Dunne, Assistant Secretary, Workplace Relations and Economic Migration Division who is retiring at the end of this year. Clare has provided great support, encouragement and guidance throughout the process and her energy and commitment to reform in this area will certainly be missed by the entire Group.

It may be useful to discuss the work of the Group in more detail and I can arrange to meet with you in the New Year on this basis.

Yours sincerely,

_____

Prof Michael Doherty

Head of Department of Law

Appendix D:

Interview Question Set

Interview Question Set for Semi-Structured Interviews

Description: Semi-Structured interviews with different key actors of Irish industrial relations.

4 different groups of interviewees:

- Trade Unionists
- Employer Representatives
- State Representatives
- Academic Experts

Set of interview questions:

TOPIC 1: Voluntarism in Irish industrial relations and the role of law

What do you understand by voluntarism in Irish IR today?

Should the term voluntarism remain the best way to characterise Irish collective bargaining?

Would increasing state intervention in form of legal regulation be favourable to regulate Irish collective bargaining? If yes/no: why?

What are the advantages of state intervention in Irish collective bargaining?

What are the disadvantages of state intervention in Irish collective bargaining?

Does legal regulation or a voluntarist approach operate best in crises, like Brexit or Covid-19 and why?

TOPIC 2: The balance of power in Irish industrial relations

How did the balance of power in Irish industrial relations change since the economic crisis 2010?

Is there still a balance of power between the industrial relations actors. If no: How could the power be rebalanced or should it be rebalanced?

Is the new 'social dialogue' as conducted by the Labour Employer Economic Forum (LEEF) akin to the former social partnership (1987-2010)?

The new EU Directive on adequate minimum wages, that also calls for 80% collective bargaining coverage, is it a game-changer for Irish IR?

TOPIC 3: The role of the Irish Labour Court

The Labour Court is not a court of law and is traditionally seen as the 'heart of voluntarism'. Recommendations are generally not enforceable against the employer. The Industrial Relation Acts 2001-2004 (as amended in 2015) enable binding decisions that are enforceable by the Circuit Court in certain cases. Should the Labour Court decisions in general become binding

for both parties to the industrial conflict – hence, should it acquire the same position as a court of law? If yes/no: why?

Do you think that there is room to improve the role of the Labour Court in Irish IR?

How can disputes at the Labour Court be solved in a more timely and efficient manner?

TOPIC 4: The Irish Industrial Relations Acts

After the *Ryanair case*, the Industrial Relations (Amendment) Act 2015 was enacted to make the 2001-2004 Acts efficient again. Has that Act set any precedents in the cases taken under it?

Why are industrial relation actors making little use of the 2015 Act to achieve binding Labour Court decisions?

TOPIC 5: Constitutional trade union recognition

Should trade unions have the right to bargain at all workplaces?

Should that right to bargain become a constitutional right? If yes/no: why?

TOPIC 6: Trust and good faith in Irish industrial relations

Is the current relationship between the industrial relations actors a trustful one?

How can trust and good faith be strengthened within the process of collective bargaining?

How can the acceptance of non-binding Labour Court recommendations be strengthened?

How can employer engagement be fostered?

How could the commitment of the parties of industrial relations to the results of voluntary negotiations be strengthened?

TOPIC 7: Joint Labour Committees (JLCs)

What policy/legal changes could be made to improve the JLC system?

What is needed to increase employer involvement in the JLC system?

How can the confidence of the industrial relation actors in the system be increased?

TOPIC 8: Strengthening collective bargaining

Does the current system of Irish collective bargaining need to be reformed? If yes/no, why/how?

How can collective bargaining be strengthened and promoted on a national level?

(***Background:*** *The current wording of the Draft EU Directive on the Minimum Wage includes a requirement for Member States, where collective bargaining coverage is less than 80%*, to provide for a framework of enabling conditions for collective bargaining and the establishment of an action plan to promote collective bargaining (Final Report of the LEEF High Level Working Group on Collective Bargaining, 2022).*

How could the bargaining process be conducted in a more timely and efficient manner?

Do you think that the proposals of the LEEF High Level Report on Collective Bargaining (2022) can command cross industry support?

Do you believe that the LEEF High Level Report on Collective Bargaining (2022) main recommendations on enterprise bargaining are a good way forward, if not why?

TOPIC 9: The future of Irish industrial relations and personal experiences

Should voluntarism remain the future principle to characterize Irish IR? / Are you confident that features of Irish IR can continue to make a positive contribution to Ireland's social and economic developments?

Are there characteristics of other EU, or other, IR systems that would improve how IR functions in Ireland?

What do you consider that there are unique factors in Irish IR that can be utlised to plan better?

Are there any examples of the failure of Irish IR that you have witnessed/experienced?

Are there any examples of the good and positive factors of Irish IR that you have witnessed/experienced?

Appendix E:

Informed Consent Form

Plain Language Statement

DUBLIN CITY UNIVERSITY
Informed Consent Form

As part of the PhD Study, the researcher is conducting research into the area of *Voluntarism in Irish Industrial Relations*. The researcher is inviting you to be a part of the study because of your role and knowledge of Irish employment relations.

Research Study Title
The title of the research study (PhD thesis) is *"The Role of the State in Irish Industrial Relations – Is Collective Bargaining still Voluntarist?"*

Purpose of the Research
The researcher of this study is Katharina Sophia Zimmer, PhD student at Dublin City University Business School. The PhD supervisor is Dr Eugene Hickland, Assistant Professor of Employee Relations and Human Resource Management at Dublin City University Business School. This research will be conducted for Dublin City University Business School. The research study examines the current state of Irish industrial relations and future implications. The study seeks to answer the principal research question if Irish collective bargaining can still be considered voluntarist.

Confirmation of Participant
I acknowledged that my personal data might be collected and processed. Any data that is collected and processed will held by Katharina Sophia Zimmer for the purposes of this study and related academic research.

I agree to participate in a semi-structured interview/s and for it to be recorded and for the subsequent transcription information provided to be used in the PhD thesis or other related academic research. I understand that there might be direct or indirect citation or reproduction of the provided information. I can choose to stay anonymous by circling "No" in the list of questions below.

Participant – please complete the following (Circle Yes or No for each question)

I have read the Plain Language Statement (or had it read to me)	***Yes / No***
I understand the information provided	***Yes / No***
I understand the information provided in relation to data protection	***Yes / No***
I have had an opportunity to ask questions and discuss this study	***Yes / No***
I have received satisfactory answers to all my questions	***Yes / No***
I am aware that my interview will be recorded	***Yes / No***
I agree that I do not wish to stay anonymous in the PhD thesis	***Yes / No***
For union members only:	
I agree that data related to my union membership can be used by the researcher	***Yes / No***

Voluntariness of Participation
Involvement in this Research Study is voluntary. I can withdraw from the Research Study at any point in time and without any penalty. I can also change my opinion about staying anonymous. In both cases, I can contact the researcher Katharina Sophia Zimmer under the following email address: katharina.zimmer2@mail.dcu.ie. Generally, there are no risks arising for me due to my participation in the Research Study, however, in any case of feeling uncomfortable with a specific issue, or in case I foresee a specific risk, I can contact the researcher.

Confidentiality of Data
All necessary arrangements will be made by the investigator and supervisor to protect the confidentiality of data. I am aware that the information that I provide to the researcher can only be protected within the limitations of the law, i.e., it is possible for data to be subject to subpoena, freedom of information request or mandated reporting by some professions.

Retention and Disposal of Data
Data will be stored in a secure place that is not accessible to unauthorized third parties. Data will be stored for the duration of the academic project and will afterwards be disposed according to any subsequent legal deadlines. All data will be deleted on 3/12/2030 the latest.

Signature:

I have read and understood the information in this form. My questions and concerns have been answered by the researchers and I have a copy of this consent form. Therefore, I consent to take part in this research project.

Participants Signature: _____

Name in Block Capitals: _____

Witness: _____

Date: _____

DUBLIN CITY UNIVERSITY
Plain Language Statement

The present research project is an investigation on the current state of Irish industrial relations and the role of the phenomenon of voluntarism. The title of this research study (PhD thesis) is "*The Role of the State in Irish Industrial Relations – Is Collective Bargaining still Voluntarist?".*

This research is conducted on a macro-level and examines the operation of the voluntarist system of industrial relations in Ireland. Results will be publicly available and useful for the public debate about the future of industrial relations in Ireland.

The researcher of this study is Katharina Sophia Zimmer, PhD student at Dublin City University Business School. The PhD supervisor is Dr Eugene Hickland, Assistant Professor of Employee Relations and Human Resource Management at Dublin City University Business School.

The research is conducted for Dublin City University Business School.

The contact details of the principal investigator Katharina Sophia Zimmer are:
Email: katharina.zimmer2@mail.dcu.ie
Phone: 004917672211581

Any personal data that is collected and processed by the researcher. Data is processed and held for the research project, which is a PhD thesis. Personal data may be given for instance during semi-structured interviews. It is the intention to anonymize all participants, except where express permission is given. Data will be retained until the end of the research project and will be destroyed in compliance with all and any legal requirements.

The study will be conducted in compliance with the General Data Protection Regulation (GDPR). If you have any concerns regarding how your data in this study has been handled, you can contact:
DCU Data Protection Officer, Mr. Martin Ward – (data.protection@dcu.ie Tel: 01-7005118/01- 7008257) who will handle any data protection concerns arising from this research. An individual also has the right to report a complaint concerning the use of personal data to the Irish Data Protection Commission.

Involvement in this Research Study is voluntary. The participant can withdraw from the Research Study at any point and without any penalty. The participant can also change his/her opinion about staying anonymous. In both cases, he/she can contact Katharina Sophia Zimmer under the following email address: katharina.zimmer2@mail.dcu.ie. Generally, there are no risks arising for the participant, however, in any case of feeling uncomfortable with a specific issue or in case a specific risk is foreseen, the participant can contact the researcher.

Involvement in the research study will require the participant to participate in semi-structured interviews that will be recorded and transcribed. Data is used to provide information for the PhD thesis that will be published as either direct or indirect citation form, depending on the permission given by the participant.

Arrangements are made to protect the confidentiality of data, as providing secure storage, an extinguishing concept and use data only for the specific purpose of the PhD thesis. The researcher and supervisor of this study ensure confidentiality of data towards third parties. Confidentiality of the information provided to the researcher(s) cannot always be guaranteed. Information can only be protected within the limitations of the law, i.e., it is possible for data to be subject to subpoena, freedom of information request or mandated reporting by some professions.

Involvement in this research study is voluntary. Participants can withdraw from the Research Study at any point. Participation in the project will end at the point of the withdrawal. Data will then be deleted in compliance with legal requirements. Participants can also change their opinion about staying anonymous. In both cases, they can contact the researcher under the contact details stated above.

If participants have concerns about this study and wish to contact an independent person, please contact:
The Secretary, Dublin City University Research Ethics Committee, c/o Research and Innovation Support, Dublin City University, Dublin 9. Tel 01-7008000, e-mail rec@dcu.ie