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Tánaiste and Minister for  
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**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 18<sup>th</sup> 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 5<sup>th</sup> 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 5<sup>th</sup> 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,



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Prof Michael Doherty  
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