



Irish Congress of Trade Unions

Observations & Recommendations on

Report V (1)

The transition from the informal to the formal economy

29th November 2014

Introduction

The Irish Congress of Trade Unions (ICTU) is the representative voice of trade unions in Ireland. There are 47 unions affiliated to Congress, with a total membership of 797,289 of whom 579,578 are in the Republic of Ireland and 217,711 in Northern Ireland (www.ictu.ie). In addition there are 33 Trades Councils, representing groups of unions at local/regional level, affiliated to Congress covering both the Republic and Northern Ireland. The ICTU also operates a national network of Congress Centres in 25 local outreach centres, offering advisory and other services at community level including practical assistance for workers seeking to transition from the informal to the formal economy.

The Irish Congress Trade Unions welcomes the opportunity to make observations and recommendations on the text of the proposed Recommendation concerning the transition from the informal to the formal economy based on the Conclusions adopted by the International Labour Conference following its first discussion of the item at its 103rd Session, in May–June 2014.

Congress supports the recommendations of the International Trade Union Confederation (ITUC) and would like to make some recommendations arising from our on-the-ground experience in Ireland.

Recommendations on Part VI: INCENTIVES, COMPLIANCE AND ENFORCEMENT

One of the consequences of the austerity measures adopted in response to the financial crisis has been a sharp increase in unemployment. In addition unemployed workers, unable to find employment have taken up self-employment, more as a means to create their own employment than arising from a desire to own a business or to be an entrepreneur.

For these workers, a safe transition from welfare into the formal economy means having in place a phased reduction in their unemployment payments. Our experience of representing workers in this situation is that they are unlikely to find sufficient work to become financially viable in their first weeks or months and when unemployment payments are sharply cut off there is a risk that workers will start out in the informal or shadow economy as they 'test the water' to see if they can secure sufficient work.

To ensure that unemployed workers, seeking to create own jobs are not effectively forced to set up in the informal economy trade unions in Ireland have long supported an allowance specifically designed to enable long term unemployed to take up self-employment opportunities and to retain a reducing proportion of their social welfare payment plus secondary benefits over two years.

The allowance is paid on a reducing scale over a two year period, i.e. 100% of a person's social welfare payment in Year One and 75% in Year Two.

Congress recommends that Article 21 could support similar approaches under the theme of incentives as at the moment the focus is solely on tax and registration.

We recommend an amendment to insert new (c) as follows:

21. Members should:

(a) reduce, where appropriate, the barriers to the transition to formality, including those relating to registration, taxation and compliance with laws and regulations; and

(b) provide incentives to, and promote the advantages of, effective transition to formality, including improved access to business services, finance, infrastructure, markets, technology, education and skills programmes, and to property rights

Insert new

(c) support unemployed workers to avail of self-employment opportunities through the formal economy by allowing them to retain a proportion of their social welfare payment during the transition.

There is no doubt that the vast majority of these own account self-employed workers are seeking full time permanent jobs, but in the absence of jobs, they are seeking to avail of income opportunities through self-employment as a means to provide for themselves and their families. It is essential that this amendment is not reworded in such a way to suggest that own account self-employment is a desirable alternative to job creation.

Effective Enforcement

The experience of trade unions in Ireland is that the imbalance in power between employers and individual workers creates a situation where employers coerce their informal economy workers into remaining in this situation. This can often include situations where the worker is partly in the formal and partly in the informal. Their employer puts pressure on them to agree to an under-declaration of a source of their income, for example 'cash jobs' and 'off the books' arrangements so as to evade tax and PRSI liabilities. The risk of this is multiplied when the worker will be held responsible and subjected to financial penalties by the authorities. This leads to a situation where workers are more likely to cooperate with their own exploitation than report their abuse because they fear the authorities more.

In Ireland the obligation is on the employer to make all employment arrangements in the formal economy and in particular to make the correct deduction and payments in respect of tax and social security contributions from the workers wages. If the employer does not do so, it is the employer who is held responsible for the cost of the entire amount and any arrears that may be due. Failure to meet this responsibility means that monies which have not been paid can be recovered in court as a debt to the State.

In addition where an employer does not make the social security contributions on their workers' behalf the employer may be required to repay social welfare payments that the worker has received while working for them (these benefits include Illness Benefit, Jobseeker's Benefit, Jobseeker's Allowance, Pre Retirement Allowance, Invalidity Pension, and Family Income Supplement).

These measures have a double benefit as they create a reduced incentive for employers to operate in the informal economy and ensure that workers are not placed at a double loss by the actions or inactions of their employer. It also makes it much easier for workers to report and escape the informal economy.

We are therefore recommending a change to include this important principle in Part VI. INCENTIVES, COMPLIANCE & ENFORCEMENT.

The text should be amended to clarify that Members should “when formulating measures to ensure compliance with national laws and regulations ensure that the burden of repayment falls onto the employer.”

Congress proposes amending the following text at 22:

'provide for preventive and appropriate corrective measures to facilitate the transition to the formal economy, and ensure that the administrative, civil or penal sanctions provided for by national laws for non-compliance are adequate and strictly enforced [especially for those escaping from the formal economy to avoid taxes and social laws].'

By replacing it with the following:

'provide for preventive and appropriate corrective measures to facilitate the transition to the formal economy, and ensure that the administrative, civil or penal sanctions provided for by national laws for non-compliance are adequate and strictly enforced [when formulating measures to ensure compliance with national laws and regulations ensure that the burden of repayment falls onto the employer].'

Recommendations on Part VII.

FREEDOM OF ASSOCIATION, SOCIAL DIALOGUE & ROLE OF EMPLOYERS' AND WORKERS' ORGANIZATIONS

Congress underscores the importance of ensuring that self-employed workers, i.e. that is those who personally carry out the work or service, in the formal and informal economy have their right to organise and collectively bargain recognised by the state. This has not been the case in Ireland. Our experience has been that the Competition Authority (an organ of the Irish State) has made unlawful the collective agreement made between SIPTU/EQUITY, a trade union of workers and the IAPI an association of employers. The main line of reasoning from the Competition Authority was that these 'workers' were in fact economic 'undertakings' and the collective agreement was a cartel type arrangement. This despite the fact that the collective agreement dealt with matters applicable to employees, such as, hourly, daily and half daily rates of pay (fee's) including the payment of overtime along with the length and frequency of the breaks to be provided.

Congress holds that this prohibition represents a violation of the rights set out in ILO Conventions on Freedom of Association and Protection of the Right to Organise No. 87 and the Right to Organise and Collectively Bargain no.98. These Conventions recognise the right of all workers to form and join organisations of their own choosing, without prior authorisation, subject only to the rules of the trade union concerned and it lays down a series of guarantees for the free functioning of organisations without any interference by public authorities. Article 2 of the Convention provides that the right to organise is to be granted to “all workers without distinction whatsoever”.

The decision by the Competition Authority from 2004 is still in force in 2014 and has effectively returned the Combination Acts that outlawed trade union activity in Britain and Ireland over 100 years ago as far as actors, musicians, film technicians and freelance journalists and other self-employed workers are concerned.

The reason we raise this in our reply to the Brown Report is explain our concern and request to ensure a robust wording that secures the right to collectively bargain through a trade union for those own account self-employed workers in the informal sector and the formal. In particular it should not be acceptable for States to determine that the interests of such workers cannot be represented by their trade union, but must instead be represented some other agency or group determined by the State.

Congress is particularly concerned about the wording in paragraph 26, in particular the following:

Members, in designing, implementing and evaluating policies and programmes of relevance to the informal economy, including its formalization, should consult with and promote active participation of the most representative employers' and workers' organizations, which should include in their rank, according to national practice, representatives of membership-based representative organizations of workers and economic units in the informal economy.

Our concern is that this wording raises a doubt that vulnerable economically dependent 'workers' could instead be rightly categorised as 'economic units' and their right to Freedom of Association, the Right to Organise and Collectively Bargain be so undermined as to be destroyed under the guise of competition law.

One way to address this potential difficulty would be to remove the reference to 'economic units' from this and other sections. Or to provide a clarification to confirm right of all 'workers' even if they are self-employed to collective bargaining through a trade union.

Recommendation on Part VIII: DATA COLLECTION & MONITORING

Congress stresses the importance of monitoring new and emerging activities that may have implications or facilitate the development and growth of the informal sector. We are concerned that the wording does not capture the need to be vigilant about new practices. The need for this can be explained in the context of new forms of employment such as crowdsourcing. Without the ability to collectively bargain through a trade union there is every risk that the market will create a global digital sweat shop populated by workers toiling invisibly on an electronic device at home for all hours day and night. Who downwardly bid each other through various online platforms for pieces of work that are paid in the bitcoin of the employers choosing. This may not be such an exaggeration as it appears on first reading.

Congress is recommending inserting a new (c) so that the following will read :

28. Members should, in consultation with employers' and workers' organizations, on a regular basis:
(a) where possible and as appropriate, collect, analyse and disseminate statistics disaggregated by sex, age, workplace, and other specific socio-economic characteristics on the size and composition of the informal economy, taking into consideration, as appropriate, the guidance and support of the International Labour Office; and

(b) monitor progress towards formalization.

Insert new

(c) monitor new practices for their potential impact on the informal and formal economy.

Finally as previously stated we support the recommendations made by the ITUC and we set these out below as they form part of the ICTU response.

1) Paragraph 6 (c): The reference to subcontracting and supply chains is important to include. The Worker's Group feel it is very important to refer to "subcontracting and supply chains" ensuring that a reference in transitioning from the informal to the formal economy includes informal work performed in supply chains. An estimated 60% of global trade (some \$20 trillion) is dependent on contracts in supply chains sourced from different parts of the world. Ensuring that the exploitation of workers in the informal economy is not a part of global supply chains is central to an effective transition to the formal economy.

2) Participation, consultation and representation is referred to in a number of paragraphs in the text, in paragraphs 7, 29 and 30. The Worker's Group supports keeping the reference "through tripartite mechanisms" which demands a more recognised structure than just consultation. The text proposed by the Worker's Group was agreed with the Employer's Group in the 2014 discussion. We support it being kept as agreed.

3) Domestic workers and subsistence farmers remains in brackets in paragraph 8 (i) and should be kept as specific reference to these groups of workers (who form the majority of workers in the informal economy in many countries) are especially vulnerable to discrimination.

4) The responsibilities of different levels of government are referred to in paragraphs 11 and 13. It is important to engage governments in their various roles at national, state or provincial and local or municipal levels in the transition. The fundamental point of an integrated policy framework that is planned and implemented across the different levels of government, is meant to ensure ownership and coherence of economic, social and development policies as well as of local regulations and funding of programs. The role of local government is especially relevant to facilitating the transition and needs to be specifically considered.

5) Paragraph 19 (a): The reference to minimum living wage must be kept. This is a point of disagreement from the 2014 discussion which the Employers strongly oppose the inclusion of minimum "living" wage. In many countries, minimum wage setting has been used as an important tool to reduce poverty and inequality. However, in many others, minimum wages are not set at a level which come close to providing an adequate wage, and in others, there simply is no minimum wage that applies to workers in the formal or informal economy. Convention 131 requires governments to put in place a system of minimum wage setting. Governments, in consultation with social partners, need to ensure that minimum wages are at such a rate to reduce poverty and income inequality and meet the needs of workers and their families. ILO Convention 131 must be read in conformity with the ILO Constitution that in its preamble, calls for the provision of "an adequate living wage" and with the Declaration of Philadelphia refers to "a minimum living wage to all employed and in need of such protection".

This call was reiterated in the Social Justice Declaration. Furthermore Article 23 of the Universal Declaration of Human Rights also sets a human rights standard for a minimum wage when it states: "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection."

Therefore the criteria of Article 3 of Convention 131 at least needs to meet the level of a minimum living wage. Member states are free to define the needs of workers and their families above a minimum living wage, but any minimum wage that does not ensure a worker and his/her family a socially acceptable living would not satisfy the requirements of Convention No. 131.

6) Paragraph 22 (a): refers to text still in brackets “ensuring recognition and enforcement of formal employment relationships”. This remains an essential and necessary area for the recommendation to address.

ENDS

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