



Congress Briefing

The Lisbon Treaty & its Aftermath

**Irish Congress of Trade Unions
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Introduction

Congress believes that a number of developments in recent years - at both a national and an EU level - have served to undermine support for the European Project within the trade union movement.

Labour Market & Migration

Congress strongly supported the enlargement of the EU. But we did not know that the Irish government intended to immediately throw open the Labour Market, in conjunction with the UK and Sweden. We were not consulted about this.

This exposed an existing labour market of 2 million to one of 72 million. Moreover, it was a virtually unregulated labour market because the then Minister for Enterprise Trade & Employment, Ms Harney, had refused all previous exhortations from Congress to increase the size of the Labour Inspectorate. The entirely predictable result was a sharp rise in the incidence of exploitation and abuse.

This decision was taken solely at the behest of the business community, a fact subsequently acknowledged by government. If we had been consulted we would have demanded increased regulation. In the event the issues of exploitation and threatened displacement were crystallised in the Irish Ferries dispute, which highlighted the damaging potential for social cohesion of not having adequate labour market regulation and enforcement in place. This was subsequently addressed in the *Towards 2016 Agreement*, although we are still awaiting much of the legislation required.

EU Directives & Social Europe

Over the years, successive governments have elevated to an art form the blocking, delay and minimalist transposition of EU Directives into Irish law. Indeed, Congress repeatedly expressed its frustration at the long campaign waged by both Ireland and the UK to block the proposed Directive on Agency Workers. We placed this on the agenda for the current round of social partnership talks, by Congress, before the issue was resolved under the Slovenian presidency. The Irish government (and employers) was left looking rather isolated and foolish when the British government unilaterally dropped its opposition to the directive, having concluded a separate deal with the CBI. This ambivalent and often hostile attitude to EU measures has, we believe, been communicated in some form to the wider populace and serves to attach negative connotations to the EU. Thus, even when there is positive news from Brussels, the government is in no position to communicate it.

There is little doubt that but that the political centre of gravity of Europe has moved in a neoliberal direction. The outlook for more social legislation is diminished. This will suit the Commission which is the most neoliberal we have ever had. For the last 30 years Europe was the driving force behind social legislation in Ireland: equal pay was only brought in here on foot of a complaint to the Commission by Congress in 1974. We owe a lot to Europe and to great reforming Presidents like Jacques Delors. But the fear is that the era

of social legislation may be over and with it the concept of Social Europe. It is Social Europe that commands the support of the trade union movement.

Europe now leads the world in developing legislation to regulate competition to guarantee that companies can have certainty about how to conduct business across borders and that these rights are being privileged over the rights of workers. The Services Directive was a prime example of this tendency and was only defeated in its original form after a prolonged campaign, involving trade unions across Europe.

ECJ Judgements

Recent judgements from the European Court of Justice – Laval, Viking, Rueffert – also exhibit a worrying trend, in that they seem to confirm this privileging of business rights over rights to decent pay and conditions. The judgements, particularly Laval, seem to move decisively towards favouring a legally based industrial relations system. This has major implications for the voluntarist system of industrial relations which has operated in this country since 1946. However, it follows on a Supreme Court judgement relating to Ryanair last year in which any legal right to collective bargaining was denied. Overall the assessment being made by the trade union movement in Europe is that there is a determined effort being made to re-introduce the original Services Directive by the back door.

Social Progress Clause

The European Trade Union Confederation, to which Congress is affiliated, has suggested the insertion of a Social Progress Clause. This would firmly establish that the Treaty and especially its fundamental freedoms shall be interpreted as respecting the observance of fundamental rights, especially trade union rights to freedom of association, collective bargaining and collective action. It should also establish the rights of workers and their representatives without distinction whatsoever to take collective action to improve their working and living conditions above minimum standards. There is a precedent for this type of procedure with the Amsterdam Treaty to which the Employment Chapter was added at a late stage. There are also precedents with the Monti clause and the Services Directive.

Secondly, the Posted Workers Directive should be strengthened to fulfill its original aims of protecting workers. The Commission, Parliament and Council need to act urgently to repair the potential damage caused by the reinterpretation of the Directive by the ECJ in Laval, Ruffert and latterly Luxembourg. This Directive is highly relevant to mobility and migration and its principle of equal treatment with local workers would reassure workers and their trade unions that the EU is not a vehicle for social dumping.