

Global Forum News



CETA and the Wallonian Question

Some commentators have suggested that in calling the agreement a mixed agreement – i.e. one that had to be ratified in each of the member states, the EU was sending a message not to Canada but to Britain as an object lesson in just how difficult negotiating a trade agreement could be in the wake of Brexit. The question then is ‘what did the Wallonian authorities get in exchange for their assent to CETA?’ The answer is best summarised as follows:

Some concessions on agriculture,

The strengthening of the proposed new investment courts that are to replace the now notorious s ISDS system,

A reference by Belgium to the European Court of the said investment court to examine its compatibility with European laws and treaties.

[You can read a succinct summary of this outcome, from a standpoint that shows little favour for Wallonia's position here.](#)

.....Meanwhile in the Netherlands

Supporters of a referendum on CETA have collected two-thirds of the signatures necessary to force a vote. Some 200,000 people have now signed a petition calling for a public vote, which is backed by environmental groups and food lobby group Foodwatch. Under Dutch law, 300,000 signatures are sufficient to trigger an advisory referendum. In April, the Netherlands held a referendum on the EU's treaty with Ukraine, which the no vote won.

EESC: Concerns Remain on TTIP

The September meeting of the European Economic & Social Committee adopted an opinion on the new TTIP proposals. The full opinion is available online but the concluding paragraphs are of note:

In particular the the Committee opinion raised concerns relating to trade the operation of private arbitration tribunals (our emphasis):

“The meaningful commitments made by the EU in the Chapter on services and reiterates its calls for increased market access at federal and state level, for enhanced regulatory cooperation – in the recognition that market access depends also on it – and its request to preserve public services in accordance with the TFEU.

“The comprehensive and detailed scope of the Commission proposal on trade and sustainable development. It recalls, however, that the actual value of these provisions depends primarily on the possibility of effectively enforcing them. The EESC calls for an effective enforcement mechanism and a strong monitoring mechanism via civil society.

“The proposal aiming to reform the investment protection system and the objective of establishing a permanent multilateral investment court that replaces private arbitration tribunals. However, the EESC still sees some critical points of concern as listed in the opinion to be addressed. It also asks the European Commission to draw up an impact assessment covering both the cost and the functioning of the new investment court system.”

Seanad Motion on Freelance Rights

The main issue before the ILO at the moment is the collective bargaining rights of self-employed freelance journalists, voice over actors and session musicians. The focus has now returned to Ireland with the passage of the Competition (amendment) Bill by the Seanad. [The text of the Bill is available here.](#)

Posted Workers Directive

This Directive seeks to regulate the conditions of workers who have been sent by their employer to work in another member state. In addition to a recent directive on enforcement-

transposed into Irish law last summer - the EU commission proposed a “targeted revision of the directive.” This was opposed by the parliaments of sufficient countries to invoke the so called ‘yellow card’ procedure.

These countries comprised the 2004 accession countries (minus Cyprus Malta and Slovenia) together with Croatia and Denmark. The Commission considered this proposal and required by Treaty law and decided to reject the proposal. A period of negotiations between the Commission, the Council and the Parliament will ensue.

Recent European Court of Justice Cases

In response to a Dáil question on workers with no fixed base it has been confirmed that the Working Time Directive must be interpreted as meaning that, in circumstances such as those at issue in the Tyco case, in which workers do not have a fixed or habitual place of work, the time spent by those workers travelling each day between their homes and the premises of the first and last customers designated by their employer constitutes ‘working time’.

No action is required in Ireland required to enforce the ruling of the CJEU in the Tyco case, as the judgement relates to the interpretation of the existing provisions. I.e. the Organisation of Working Time Act 1997. (Dáil question 642, October 18, 2016)

The Digital Economy, Regulation and the Changing World of Work: Recent Opinions from the EESC

May 2016

In an important opinion on **Changing Employment Relations** the Committee called for further **and** analysis on:

The changing nature of work and employment relationships to inform EU employment policy.

The impact of these developments on skills.

The lifetime implications of new forms of work, whether they are gendered or related to other demographic variables (such as age, disability, ethnicity and migrant status);

The impact on collective bargaining coverage and the right to freedom of association needs to be assessed and concerns to be addressed and remedied.

The impact of the conclusion of COP21 on European transport policy, in which the committee called for a flexible interpretation of the Paris accords as they apply to transport in remote and rural areas.

Decent Work in Global Supply Chains The Committee adopted an important opinion recommending that the European Commission adopts a comprehensive and ambitious strategy in order to promote decent work in GSCs with all its internal (access to EU public procurement, labelling etc.) and external policies (trade, development, neighbourhood policy etc.)

July 2016

The European Citizens’ Initiative (ECI) Four years after the ECI regulation entered into force, the Committee has pinpointed significant technical, legal and bureaucratic problems, along with a clear excess of powers attributed to the Commission. The committee recommends a number of measures including the simplification of the process and a separation of powers currently enjoyed by the commission as both a receiver of signatories and a judge of the petitions.

The Digital Pillar of Growth The Committee refers to the sizeable population of older people in the EU and to the economic potential that they represent a fact that is reflected in one



of the pillars of economic growth: the digital sector. The committee recommends a range of measures to encourage digital participation by older people including recognition of internet access as a universal right.

Aviation Package in a wide ranging opinion the Committee stressed the need for workers’ rights to be protected in implementation and for the process to be accompanied by strong social dialogue.

Industry 4.0 and Digital Transformation The Committee welcomed the Commission proposals but considered that “the communication is disappointingly concise on the considerable social consequences of digitalisation in industry. In order to avoid a split society specific attention is needed for those generations and income groups that may be hard hit. For many others, there will be new opportunities.”

September 2016

Future Proof Regulation This is an exploratory opinion requested by the Slovak Presidency. It stresses the need to see regulation as a positive tool of the EU not as a burden, as is so often maintained by business interests.

New Measures for Development-Oriented Governance & Implementation This opinion concerns the European semester and recommends increased supports and capacity building for social partners and NGOs involved in the process.

Public Tax Transparency The Committee welcomed the Commission proposal on country by country reporting.

Sustainable Development A mapping of the EU's internal and external policies. This opinion was undertaken at the request of the European Commission) and recommended flagship initiatives in the areas of:

A just transition to a low-carbon, circular and collaborative economy;

Transition towards a socially inclusive society and economy – decent work and human rights;

Transition to sustainable food production and consumption;

Investing in innovation and long-term infrastructure modernisation and encouraging sustainable businesses;

Making trade work for global sustainable development

Protection from Cancer-Causing Chemicals “Since the Committee unreservedly endorses the proposal and feels that



it requires no comment on its part, it has decided to issue an opinion supporting the proposed text.”

Long-Term Social Care, Labour Supply & Mobility The Committee called on the Commission to work with member states to develop a package of measures to uphold the rights of live in carers.

European Cloud Initiative The Committee welcomed this initiative but urged the commission to take a range of accompanying measures to ensure the maximum benefit for all European citizens.

ICT Standardisation for Digital Single Market The Committee expressed some reservation at the Commission's proposals commenting that: “The communication should perhaps focus on partnership-based cooperation with global standardisation organisations rather than following the principles of competition, given that we broadly share the same needs, which transcend the borders of the EU.”

Entry/Exit System for non EU Citizens Entering the EU The committee stressed the need for a balanced approach which reconciles security and proper law enforcement without ever departing from the fundamental values of the EU. [Full text of the recent opinions available here](#)

What is the Common Travel Area?

In the post Brexit context this critical issue has been much discussed. What follows is a precis of a paper by Bernard Ryan, which first appeared in the *Modern Law Review* (2001).

When the Free State was founded in December 1922, both Britain and Ireland were in a dilemma as to how to handle travel between the two countries and how to handle third country nationals entering either country.

The British proposed a system whereby both states would agree that passports were not necessary for travel between the two countries and that both states would enforce each other's controls on third country nationals (then termed aliens). The Irish side were furnished with a copy of the British black list of ‘undesirable aliens’. Unrestricted travel continued until the outbreak of the Second World War in September 1939, when the British imposed travel restrictions between Britain and the Island of Ireland.

These were tightened up after the fall of France in summer 1940 and despite some relaxation after the end of the war remained in place until 1952. The existence of controls between Northern Ireland and Great Britain irked the Northern Ireland government, but they were told that the controls would have to remain until the Irish side agreed to the renewal of a common system such as that applied between 1922 and 1932.

Such an agreement was made in 1952. As a shared immigration system implied a dilution of sovereignty neither government was anxious to publicize the existence of the common travel area. The contributions by Ministers in both Westminster and the Dáil on the matter could best be described as being factual rather than wholly truthful. (Dáil Debates 1952 vol. 131 col 174).

‘.....if we are to operate a control against the citizens of the Irish Republic we should have to institute a control within the United Kingdom itself’

Much of the concerns on this issue will resurface in the debate on Brexit. This statement by R A Butler made to the Commons in November 1961 is as accurate today as it was half a century ago:

“It is when we come to the difficulties of physical control that we realise the problem, and I must ask the House to follow me in those difficulties. First, if we established a control we should have to operate it against a large number of British citizens who use the Irish ports.

“I am here supposing that we could control the Eire — that is, the Republic — and Ulster border and limit the problem simply to shiploads from the Republic to the English ports, but all experience and information indicates how very difficult it is to police the Republic-Ulster border and prevent people getting across it either by day or, especially, by night.

“We are, therefore, forced to the conclusion, as we were in war time and after, that if we are to operate a control against the citizens of the Irish Republic we should have to institute a control within the United Kingdom itself; that is, against Northern Ireland and Belfast. I repeat — against the United Kingdom itself and against United Kingdom citizens.” (House of Commons debates vol. 649, col. 701 16 November 1961)