

ISME,  
17 Kildare Street,  
Dublin 2.  
27<sup>th</sup> October 2022

Micheál Martin TD,  
Government Buildings,  
Merrion Street Upper,  
Dublin 2.

Dear Taoiseach,

I am writing to you in connection with the recent Report of the LEEF High Level Group on Collective Bargaining. As you know, ISME has sought representation on LEEF since 2018, as it is increasingly apparent that the Forum is becoming the successor to partnership. At a meeting between the Tánaiste, the ISME CEO and myself in May this year, it was suggested that ISME had been offered a seat at the partnership table in 1993. I have since confirmed with three of our current National Council members who were on council at the time of ISME's incorporation in 1993, that ISME was not offered a negotiating seat at that time.

The LEEF report considers a number of issues of great relevance to ISME's membership, and by extension to the vast majority of active enterprises in the State. As a general point, we would wish that Government should consider why union density and membership is so low in Ireland. We believe two factors are key in this regard:

- The history of engagement by Irish trade unions with Irish employers and employees is not conducive to the large take-up of union membership by employees outside the public sector, and,
- The extent to which workers' rights have been formally codified<sup>1</sup> in Ireland, in conjunction with the increase of employee representative bodies, such as the citizens information advisory and advocacy services and a material increase in the involvement of the legal profession, has reduced the "premium" attached to union membership (and by extension union subscriptions) significantly. Workers don't view union membership as necessary or "worth it."

### **Joint Labour Committees.**

We note the final report of the LEEF group states (regarding JLCs) "*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.*" We are not aware of the sectors to which the LEEF group is referring, however our experience of the JLC system is entirely different.

Indeed, in the case of one of our affiliate associations, the Federation of Early Childhood Providers (FECP) the Chair of that association was told her federation could not participate in the JLC process

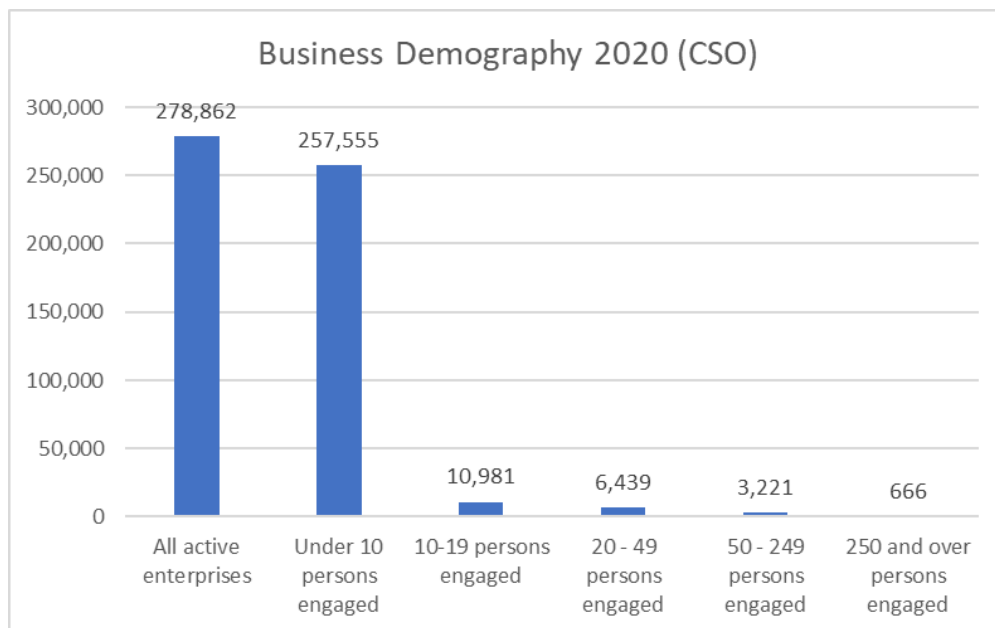
---

<sup>1</sup> <https://www.eurofound.europa.eu/publications/article/2005/irish-industrial-relations-system-no-longer-voluntarist>

because neither the FECF nor ISME were “members of LEEF.” Despite concerted opposition by a member of LEEF, we persisted in our determination to secure our right to representation for the FECF on the Early Years JLC and were successful. Regrettably, even though FECF is representative of the majority of employers (80% plus) employing the majority of employees, the FECF only enjoys a single seat on that JLC, while the minority players, who are members of LEEF, retain a majority of seats. We suggest that this example of how unrepresentative the JLC structures are of the majority of employers provides a far more credible explanation of their lack of success and representation than does the suggestion of “employer disengagement.” It further explains why the JLC system is so regularly and successfully challenged in the courts (and will be again, if the same methodology is pursued).

### Collective Bargaining at Enterprise Level

The LEEF report asks how “the current system might be improved in order to function more smoothly for parties involved in collective bargaining processes.” CSO business demography figures suggest that 99.7% of active enterprises are SMEs, and micro-businesses represent 92% of active enterprises in the State. Therefore, the suggestion that collective bargaining in Ireland might take place down to enterprise level came as some surprise to ISME. The word “micro” does not appear in the LEEF report, nor does the acronym “SME.”



It is surprising in the report that enterprise size is not referred to; as is the fact that in the vast majority of European countries, enterprise (or plant) level bargaining does not take place at all.<sup>2</sup> Sectoral bargaining is the norm. Furthermore, while Ireland does have a tripartite council (in the form of LEEF) “for the purpose of negotiation, consultation or information exchange over social and economic policies,” the established representatives of small employers have been excluded from LEEF (and its social partnership predecessors) since their inception. In the Irish context, the tripartite council reflects public sector and large enterprise representatives only. It is both unsustainable and

<sup>2</sup> <https://www.oecd.org/employment/ictwss-database.htm>

hypocritical for unions to seek compulsory recognition by employers while those employers remain excluded from existing tripartite structures and denied the opportunity to have their views considered and reflected in any decisions made. Similarly, no trade union would tolerate a situation where a minority union sought to negotiate on behalf of a majority of unions and trade union members

The LEEF report suggests that the threshold for collective bargaining should be ten per cent of the workforce with no minimum limit as to the number of employees. Given that 92% of businesses employ less than ten people, this is an absurdly low threshold, with the potential of significantly distorting the employer /employee relationship in an SME by collective bargaining being imposed on a business where one employee wanted it and nine did not. We would also suggest that the Labour Court, which has been setting employment related standards for a considerable time, has in the past set a bar of at least a “significant minority” before recommending collective bargaining. We would also draw your attention to the fact that the legislation upon which this proposal is grounded sets a minimum number of employees and concerns employee consultation only, not collective bargaining.

Given the overwhelming preponderance of micro-enterprises in the Irish business demography, any new industrial relations model that formally ignores those employers in the manner LEEF does will not be a basis for change; and has the potential of continued legal challenges, as is the case at the moment.

### **Good Faith Engagement**

The high-level group considers the need for “Good Faith” engagement in Irish workplaces. We know of no SMEs which aspire to anything less than good faith engagement with their employees, but unfortunately Irish industrial relations history is littered with cases such as Lufthansa Technik, the Irish Press, Waterford Crystal, Gateaux Cakes, Hanlon's Ambulance Assembly and others, where good faith was absent on the union side to the fatal detriment of the business. If Ireland is to progress to a continental-style collective bargaining culture, our trade unions will need to adopt a less adversarial zero-sum game approach towards engagement with business and will have to accept that enterprise survival and longevity is important for their workers and members.

It is, unfortunately, extremely difficult to turn around a business when this type of aggressive, adversarial culture sets in, which naturally makes business owners reluctant to engage. Government must devote some thought to how this would be tackled where good faith engagement has broken down between an employer and union, and what measures the employer could take short of winding up the business.

Lastly, it is noteworthy that for a group notionally concerned with employee rights, there is no mention of TUPE legislation, an area in which Irish workers’ rights are materially poorer than they are in our neighbouring jurisdiction. This represents a significant deficiency in the law for workers, as well as making tenders by Irish businesses for service contracts extremely onerous. The fact that so major a concern for Irish workers was omitted from this report is a further negative reflection on the composition of its membership, and the absence of any SME experience on it.

Notwithstanding the qualities and qualifications of the individuals who represented the employers in this LEEF report, it lacks the understanding that would be expected from people who work and take part in enterprise-level bargaining; furthermore, the detail of the report regarding small and micro businesses evidences this fact very explicitly.

As the LEEF report's outputs would impact the vast majority of Irish enterprises, which were self-evidently not represented in the consideration of this report, it is clear that a regulatory impact assessment will be required before the LEEF recommendations are taken forward.

ISME's membership is 80% micro-enterprise, and we are more than willing to play an active and constructive role in working with all stakeholders in assisting the State towards a new model of collective bargaining in Ireland, consistent with EU norms. Such cooperation would, of course, be predicated upon our being permitted to play a constructive part in collective bargaining.

Given the gravity of the proposals from an SME perspective, I would appreciate the opportunity to discuss this with you at your earliest convenience.

Yours sincerely,



Margaret O'Rourke Doherty.  
Chair, ISME

Tánaiste Leo Varadkar TD, Department of Enterprise, Trade and Employment  
Minister of State Damien English TD, Department of Enterprise, Trade and Employment  
Dr Orlaigh Quinn, Department of Enterprise, Trade and Employment  
Mr John Shaw, Department of the Taoiseach  
Mr Dermot Mulligan, Department of Enterprise, Trade and Employment  
Ms Pauline Mulligan, Department of Enterprise, Trade and Employment  
Ms Deirdre Gillane, Department of the Taoiseach