



27/10/2022

RAP/RCha/IRL/19 (2022)

EUROPEAN SOCIAL CHARTER

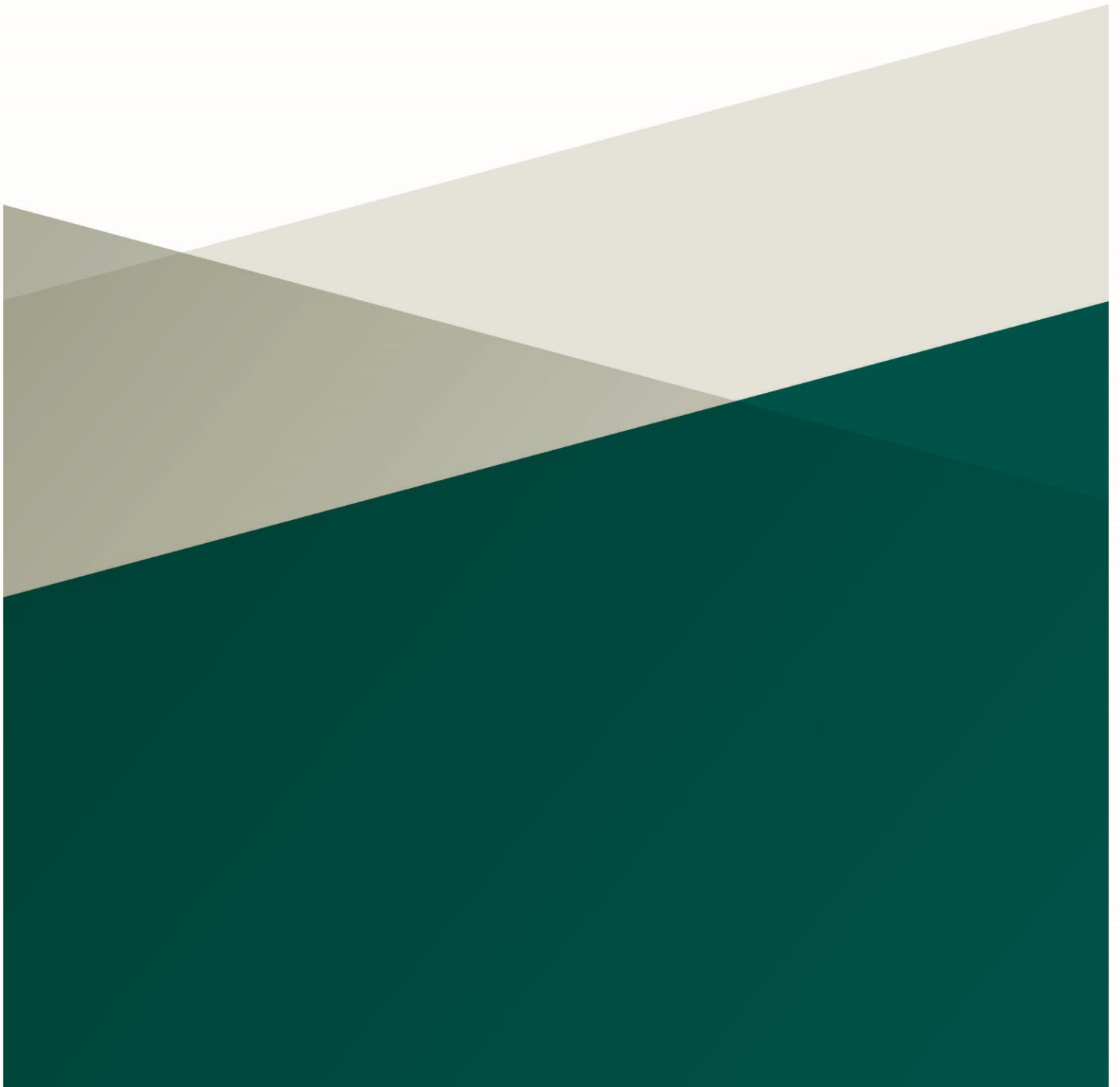
Response by the Government of Ireland to comments submitted by the Irish Congress of Trade Unions (ICTU) concerning the 19th National Report on the implementation of the European Social Charter

Report registered by the Secretariat
on 27 October 2022

CYCLE 2022

Replying observations of Ireland

27th October 2022



This is Ireland's response to the comments submitted to the European Committee of Social Rights by the Irish Congress of Trade Unions (ICTU) on Ireland's 19th National Report on the Implementation of the European Social Charter.

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Article 4: The Right to a Fair Remuneration

ICTU comment re False/Bogus Self- Employment

Congress has been engaged over a number of decades with various Government agencies with a view to addressing this issue. To date a satisfactory outcome has not been achieved.

However, it is worth noting that in December 2021 following the publication of the EU Draft Directive on 'Platform Work' the Department of Enterprise and Employment has agreed to establish a Working Group with a view to exploring possible remedies within the context of this draft directive.

Response

In late 2021, the Tánaiste and Minister for Enterprise, Trade and Employment, Leo Varadkar T.D. proposed setting up a Working Group to closely examine the issue of false self-employment / determination of employment status, consider the scale of misclassification, and to discuss the potential to improve systems by which correct employment status is determined.

The *Determination of Employment Status Working Group*, established in early 2022, is chaired by the Minister of State for Business, Employment and Retail, Damien English T.D. and membership includes representatives from the Irish Congress of Trade Unions (ICTU), the Irish Business and Employers Confederation (Ibec), the Construction Industry Federation of Ireland (CIF) and the Irish SME Association (ISME) as well as officials from the Department of Enterprise, Trade and Employment, the Revenue Commissioners, and the Department of Social Protection.

The group has met on two occasions and are scheduled to meet again in mid-November this year and will report on progress as appropriate.

Article 5: Right to Organise

ICTU Comment

Congress does not share the Department's view, as stated, in relation to the terms of the 2015 Industrial Relations (Amendment) Act.

We form this view particularly given the provisions as set out in Section 30 of the amended Act which affords the opportunity to workers to make a claim relating to an improvement in their terms and conditions only 'where in circumstances of the totality of the remuneration and conditions of employment of comparable workers in similar employments, represented by a trade union or not and taking into account the comparability of skills, responsibilities, physical and mental effort required to perform the work in which the workers are engaged'. In making its decision on comparability 'the Labour Court must also take into account the terms of any Collective Agreements in force and have due regard to all evidence presented by the parties whether by way of collective agreement or not'.

It is a matter of record by way of Labour Court user statistics, and the very low user take up, that this particular provision of the Act is no longer operable or utilised. It is, in our view, therefore, not inaccurate to assert that workers in Ireland have a 'clear and balanced' mechanism whereby they can achieve improvements to their terms and conditions.

It is further misrepresenting the effect of this legislation relating to enterprise bargaining to suggest that it is an 'effective framework that allows a trade union to have the remuneration and terms and conditions of its member in that employment assessed against relevant comparators and determined by the Labour Court' when in reality this is simply not the case'.

We believe it is remiss not to apprise the reviewer that in Ireland workers have no collective bargaining rights with employers nor does current legislation confer any such collective rights of representation to workers by the trade union of their choice.

In this regard it is worth noting that on foot of a Government decision last year to establish a High-Level Review Group on these subjects, these issues are now being examined.

Response

The [Final Report of the Labour Employer Economic Forum's \(LEEF\) High-Level Working Group on Collective Bargaining](#) was published on the 5th October 2022.

The High-Level Working Group was formed in March 2021 to review the collective bargaining landscape in Ireland and to make recommendations for improvement. The report will now be fully considered by Government, with a view to how its recommendations can best be implemented.

The Group was chaired by Professor Michael Doherty, Maynooth University and membership included senior representatives of union and employer sides nominated by the Irish Congress of Unions (ICTU) and the Irish Business and Employers Confederation (Ibec), Professor Bill Roche of University College Dublin, officials from the Department of Enterprise, Trade and Employment and the Department of the Taoiseach.

The Government will continue to engage, through LEEF, on the issues raised.