

18 December, 2012

Minister Richard Bruton
Minister for Jobs Enterprise and Innovation
Department of Jobs Enterprise and Innovation
Kildare Street
Dublin 2

RE: Interpretation of Competition law and Proper respect for the Right to Collective Bargaining

Dear Minister

I am contacting you in relation to Congress' on-going serious concern about the use of legal restrictions on the right to collective bargaining in Ireland. As you are aware, the Competition Authority have made unlawful collective bargaining among certain workers such as freelancers and workers within radio, television, cinema and visual arts who have a 'contract for service' rather than a 'contract of service'.

This restriction on the right to organise and collective bargaining is contrary to ILO Conventions, the European Charter of Fundamental Rights, the European Convention on Human Rights and the UN Declaration on Human Rights. Specifically, the ILO Convention on Freedom of Association and Protection of the Right to Organise Convention No. 87 establishes the right of all 'workers' - not just employees with a contract of service-to unionise. That Convention lays down a series of guarantees, *Article 2* provides that the right to organise is to be granted to "all workers without distinction whatsoever" and *Article 3* goes on to require that "The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof".

You can understand our surprise and disappointment to read in the letter of the 5th November 2012 from your Private Secretary (copy attached), that you are prevented from taking action that will bring Ireland in line with International and EU obligations by terms in the Memorandum of Understanding under the EU/IMF Programme that requires Irish authorities to ensure that no further exemptions to the competition law framework will be granted unless they are entirely consistent with the goals of the EU/IMF Programme and the needs of the economy.

As you will be aware this issue was raised by Congress with the representatives of the EU, the ECB and the IMF during the workshop Chaired by the ILO in Dublin on the 9th December 2012. All three representatives disputed in the strongest possible terms, that the intention or purpose of the clause on competition law in the MOU was to justify a continuing breach of ILO

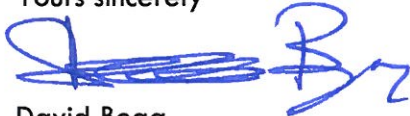
Conventions and human rights standards. Their view was the existence of the clause did not prevent you taking action to bring Ireland's law in line with ILO Conventions and EU Charter or ECHR requirements to secure proper respect for the right to organise and collective bargaining.

It is worth pointing out here that it is difficult to imagine how the needs of the economy would be damaged by allowing freelance journalists or 'voice over actors' practice their right to collective bargaining in their trade union. In any event the 'needs of the economy' or the 'goals of the EU/IMF Programme' are not among the grounds justifying a restriction on the exercise of human rights acceptable under Article 11 of the European Convention on Human Rights.

The right of these workers to organise and to collective bargaining is not a new issue. Substantial work has already been undertaken by your Department on developing a legal remedy to address the problematic interpretation of Irish Competition Law the Competition Authority. A draft amendment to Competition Acts was previously prepared by the Attorney General. Given the clarification made by the 'Troika' representatives in the presence of the ILO at the Dublin workshop and the commitment in the Programme for Government that Ireland will amend its laws to properly respect the right to collective bargaining, we are calling on you to take action on this and to introduce the amendment to competition law as a matter of urgency.

For the avoidance of any confusion, there are a number of other outstanding legislative changes needed to secure the rights of workers to exercise their trade union rights as recognised under the programme for government.

Yours sincerely



David Begg
GENERAL SECRETARY

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Oifig an Aire Post, Fiontar agus Nuálaíochta
Office of the Minister for Jobs, Enterprise and Innovation

Our Ref: 121374/MIN

5 November 2012

Mr David Begg
General Secretary
Irish Congress of Trade Unions
32 Parnell Square
Dublin 1

Dear Mr Begg

I refer to your correspondence to Mr Jimmy Deenihan TD, Minister for Arts, Heritage and the Gaeltacht concerning Towards 2016 commitments which was forwarded to Minister Richard Bruton TD, Minister for Jobs, Enterprise and Innovation.

As you may be aware, the issue of exemptions from competition law is the subject of an EU/IMF Programme of Financial Support for Ireland commitment. The current iteration of the Memorandum of Understanding under the EU/IMF Programme requires Irish authorities to ensure that no further exemptions to the competition law framework will be granted unless they are entirely consistent with the goals of the EU/IMF Programme and the needs of the economy.

Accordingly, Minister Bruton has no plans to introduce exemptions from competition law.

Yours sincerely,

John Maher
Private Secretary