



FUNDAMENTAL RIGHTS  
AND THE RULE OF LAW

## **Authorities' observations on the report on the country visit to Ireland**

28-29 June 2021



European Economic  
and Social Committee

## **Observations from the Irish Government on the draft report of the European Economic and Social Committee's Fundamental Rights and Rule of Law Group on its virtual visit to Ireland on 28-29 June 2021**

Ireland would like to thank The Fundamental Rights and Rule of Law Group of the European Economic and Social Committee (EESC) for its virtual visit during June 2021.

Ireland remains committed to the preservation and promotion of the rule of law throughout the EU and welcomed the opportunity to participate in this process.

We acknowledge the important contribution the Fundamental Rights and Rule of Law Group plays in advancing respect for foundational EU values.

### **1. Brexit and fundamental rights related to social partners**

The Protocol on Ireland/Northern Ireland, an integral part of the EU-UK Withdrawal Agreement, protects the Good Friday Agreement, North-South cooperation and the all-island economy. It avoids a hard border on the island of Ireland, while preserving the integrity of the EU Single Market and Ireland's place in it. Among other things, it includes commitments to ensure no diminution of rights, safeguards and equality of opportunity, as set out in the GFA, and confirms that Irish citizens in Northern Ireland will continue to enjoy their rights as EU citizens.

While the Protocol was designed and agreed by the EU and the UK to minimise the inevitable disruption caused by Brexit on the island of Ireland, there are significant and permanent changes as a result of the UK's decision to leave the EU. The Irish Government is aware that, as outlined in the EESC's report, the UK's withdrawal from the EU has given rise to concerns for some people living and working in Northern Ireland about what it might mean for their rights and entitlements.

The Irish Government is also conscious of the cross-border nature of many people's lives on the island, with thousands of individuals crossing the border each day to work, study, shop and socialise. The continued protection of this way of life has been a priority throughout the Brexit process. The all-island economy, which facilitates many people's livelihoods across the island of Ireland, is particularly important in this regard. The Irish Government also consistently engages with stakeholders, including businesses and civil society, on both sides of the border, including in relation to challenges posed by Brexit.

The Common Travel Area (CTA), which is recognised in the Protocol, ensures that Irish and British citizens living and working anywhere on the island of Ireland (or between Ireland and Great Britain), including as frontier workers, do not need to take any action to continue to work and/or reside in either jurisdiction. From 1 January 2021, the UK introduced changes for frontier workers (and other workers) who are not Irish or British. The Irish authorities have engaged extensively with UK authorities

in this regard and has made comprehensive information on the new UK requirements available on [gov.ie](http://gov.ie).

Regarding concern that the UK's withdrawal from the EU could result in divergence between the rights of workers in Ireland and Northern Ireland, it should be noted that the Trade and Cooperation Agreement includes level playing field provisions to ensure open and fair competition between the EU and the UK. As noted, the Protocol also commits the UK to ensuring no diminution of rights, safeguards, or equality of opportunity, as set out in the Good Friday Agreement. This includes the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender, or ethnicity. The North South Ministerial Council will also have a role in considering any issues on a North-South basis in this context.

With respect to participants' expression of concern that the border between Ireland and Northern Ireland could "harden" for certain groups of people as a result of the UK's withdrawal from the EU, it should be noted that the Protocol ensures no hard border on the island of Ireland. However, relevant immigration rules in both jurisdictions continue to apply, as they did before Brexit.

## **2. Freedom of association and assembly**

As regards participants' expression of concern as to the impact of the Electoral Act on civil society groups' ability to access funding, the Irish authorities would note the following point.

- The Government's intention is that the Electoral Commission (when established) will carry out a comprehensive review of the Electoral Act 1997 with a view to making recommendations to address, among other matters, the concerns raised by civil society. The General Scheme of the Electoral Reform Bill, which provides for the establishment of an Electoral Commission, was published earlier this year and work is ongoing to progress the Bill's development.

## **3. Freedom of expression and freedom of the media**

Regarding the reform of Ireland's defamation laws, the Irish authorities would note the following three points.

- The Review of the Defamation Act 2009 is a legislative priority for the Government as reflected in the Programme for Government which commits to "review and reform defamation laws to ensure a balanced approach to the right to freedom of expression, the right to protection of good name and reputation, and the right of access to justice".
- The objective of the review is to ensure, in accordance with the Irish Constitution and with the European Convention on Human Rights, that our defamation law continues to strike the right balance between protecting an individual's good name and privacy, and protecting the right to freedom of expression, taking account of the vital role in our democracy played by a free and independent press.

- It is expected that the report of the review will be published imminently, subject to Government agreement. As outlined in the Justice Plan 2021, it is intended that a General Scheme of a Defamation (Amendment) Bill will be prepared by the end of 2021.

#### **4. The right to non-discrimination**

On LGBTIQ issues, the Irish authorities would like to note that cross-government, action orientated LGBTI+ National Youth Strategy 2018 – 2020 was extended into 2021 to offset any delays in implementation caused by the pandemic.

On the issue of sexual violence, the Irish authorities wish to note the following update on a development that occurred after the FRRL EESC June 2021 visit. On 2 September 2021, the Department of Justice launched a portal to enable victims of non-consensual intimate image sharing to report and remove images and videos, under the #NoExcuses campaign. The functioning of this portal, hosted online at hotline.ie, is in line with the provisions of the Harassment, Harmful Communications and Related Offences Act 2020, which criminalises the recording, distributing, or threatening to distribute intimate images without consent and with or without the intention to cause harm. In enabling victims to report these images through hotline.ie, which will then issue notice and takedown orders, this portal addresses online sexual violence and abuse and assists in the prevention of repeat victimisation of the affected individual. The portal also facilitates the possible reporting of these images to An Garda Síochána for potential criminal investigation.

#### **5. The rule of law**

Concerning the point that asserted that corruption affected Ireland more than the best performing countries on the corruption perception index, although adequate safeguards against abuse of power were in place, the Irish authorities would make the following observations.

##### Criminal Justice (Corruption Offences) Act 2018

The Criminal Justice (Corruption Offences) Act 2018 repealed and replaced the seven previous Prevention of Corruption Acts 1889 to 2010. The Act provides a single, consolidated modern piece of legislation which is more comprehensive and more accessible. As well as being a consolidation, the Act responds to recommendations from the Mahon Tribunal, from GRECO (Council of Europe's Anti-corruption group), from the OECD Working Group on Bribery and from the UNCAC (UN Convention Against Corruption) Implementation Review Mechanism. Some of the key aspects of the Act include the introduction of new offences and tougher penalties in areas relating to the giving of gifts; trading in influence; false documentation; and a liability offence for bodies corporate where any individual connected with the company has been found guilty of corruption.

## Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption

In December 2020, the Minister for Justice published a cross-government report which examines how best to tackle economic crime and corruption in Ireland: "Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption". Subsequently, an all-of-Government implementation plan to progress the recommendations in the report was published in April 2021. The plan broadly categorised the recommendations under the following headings: (i) Structural/Systemic, (ii) Resourcing, and (iii) Legislative.

Some of the recommendations include:

- The Establishment of an Advisory Council against Economic Crime and Corruption to make proposals to Government on strategies and policies to tackle economic crime and corruption.
- A permanent forum of senior representatives from State agencies to facilitate greater collaboration and information sharing.
- A review of Ethics in Public Office with a view to strengthening the law relating to ethics in public office.
- Development of continuous training for investigators of economic crime and corruption.
- Engagement with the judiciary on the development of training for economic crime/corruption cases and the potential for judicial specialisation in the area.

## Review of Ethics Legislation

The Department of Public Expenditure and Reform are currently reviewing the statutory framework for ethics in public life, which is proposed to include the following elements:

- A review of Ireland's existing ethics legislative framework, including a reassessment of the 2015 Public Sector Standards Bill;
- A review of the recommendations of relevant tribunals of inquiry;
- A review of recommendations of the Standards in Public Office Commission (SIPO) based on its operation of the current regime – and consideration of ethical questions that have arisen since 2017;
- Consultations with the Department of Housing, Planning and Local Government on the local government aspects of a consolidated statutory regime;
- A review of current EU/international best practice; and
- A Public Consultation - Consultations with various parties.

Regarding the reference to the non-operation of the prisoner complaint system, the Irish authorities would like to note a number of points:

- The Irish Prison Service Prisoner complaints system is fully functioning and continues to operate throughout the COVID-19 pandemic.

- Following issues raised by the Office of the Inspector of Prisons a new Prisoner Complaints Policy and process is being drafted, supported by a new Prisoner Complaints ICT System to assist with the management and administration of complaints.
- While some issues have arisen with regard to the administration of complaints under the current system, it is not correct to state that the system is not working.
- Prisoners can and continue to raise issues of concern via the current complaints system.
- While there were limitations on non-essential visits to prisons, oversight has continued throughout the COVID-19 pandemic.
- The Inspector of Prisons continued to have unrestricted access to prisons during COVID-19 and undertook inspections which are culminating in the completion of a significant number of COVID-19 Thematic Inspection Reports.
- In addition, in July 2020 the Inspector of Prisons, in association with Maynooth University, published a report titled "Ameliorating the impact of cocooning on people in custody". This report is based on a ground-breaking collaboration between the Office of the Inspector of Prisons and criminologists, which aimed to listen to and document the experiences of people who were cocooning in custody during the lockdown.
- Members of the prison Visiting Committees, who are appointed under statute, continued to have access to the prisons through the COVID-19 pandemic. Their function is to visit at frequent intervals the prison to which they are appointed and hear any complaints which may be made to them by any prisoner.
- Prisoners continued to be able to contact the Inspector of Prison and other statutory bodies such as the Visiting Committees throughout the pandemic.

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## European Economic and Social Committee

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