

The impact of the Racial Equality Directive:
a survey of trade unions and employers
in the Member States of the European Union

Ireland

Mary Quinn

Deirdre Curran

Centre for Innovation and Structural Change,
J.E. Cairnes School of Business & Economics,
National University of Ireland Galway

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1. Demographic Background

Ethnic diversity and immigration are relatively new experiences for Ireland, which was traditionally a country of net emigration rather than immigration. Until the mid-1990s, the Irish population was relatively homogenous in terms of ethnicity and cultural origin, apart from a small indigenous traveller population of about 22,000. Rapid economic growth from the mid-1990s led to increased labour demand and acute labour shortages in specific areas, resulting in inward migration that increased rapidly following the turn of the century. Ireland, like the UK and Sweden, allowed immediate access to workers from the ten accession countries in May 2004. Employers in some sectors, notably health and hospitality, conducted targeted international recruitment drives both inside and outside the EU.

The 2006 census reported 10% of the 4.5m Republic of Ireland population to be of non-Irish origin, although this was widely believed to be an underestimate. UK nationals are the largest non-native population group, with Polish, Lithuanian, Nigerian and Latvian migrants the next biggest groups. Migrant workers are mainly employed in manufacturing, hotels and restaurants, construction, financial services, health and education and retail (AIB economic research, cited in Mulvey, 2006). Several trade union respondents expressed concerns that a backlash against migrant workers might develop in the current economic crisis and take racist forms.

2. Industrial Relations Background

Since 1987/88, Irish industrial relations have been based on institutionalised national consensus, through seven successive national social partnership agreements. The principal social partners on the employer and union sides are the Irish Business and Employers Confederation (IBEC) and the Irish Congress of Trades unions (ICTU) respectively. Since then, there have been decreasing levels of collective disputes alongside increasing levels of referral of individual disputes to state institutions. There is a range of well-developed and well-used state dispute resolution institutions (Teague and Thomas, 2008) including a specialised tribunal, the Equality Tribunal for investigating claims of discrimination. Trade union density has decreased, estimated by the Central Statistics Office as approximately 32% in 2007 (CSO, 2008). Density is substantially higher in the public than the private sector; some estimates of private sector density are as low as 20% with parts of the public sector as high as 80%.

The structure of national partnership agreements has been used as a forum for some national level equality initiatives, particularly in more recent partnership agreements, often led or co-ordinated by the national equality body, the Equality Authority. An example is the *Anti-Racist Workplace Week*, mentioned by a number of employer and union interviewees as a useful initiative. This was a social partnership initiative of awareness raising, promotion and information that ran from 2000 to 2007. It was designed to highlight the importance of building workplaces free from discrimination and racism. *'It was genuinely the partners coming together and saying, "what can we*

do together on this?" (ICTU interviewee) The original initiative has now been further developed as the *Integrated Workplaces Action Strategy*, also within the partnership framework, and includes structures to be put in place by employer organisations and ICTU.

The current agreement, *Towards 2016* (Department of the Taoiseach, 2006), has a section on *Employment Rights Compliance and Enforcement* (Section 12), detailing a significant upgrade of the existing compliance and inspection regime, which has specific relevance for migrant and other vulnerable workers. There is also a subsection *Integration of Migrant Communities* (Section 31.4.1) referring in a general way to 'a range of [integration] strategies' (p.57).

3. Trade Union and Employer Awareness

All interviewees were well aware of current legislation on discrimination, in particular the Employment Equality Act, 1998, which represented the most significant change to pre-existing Irish anti-discrimination legislation. (This Act was subsequently amended by the Equality Act 2004 which implemented the Racial Equality and Employment Equality Directives.) Interviewees tended to see race/ethnic discrimination as one element of the nine grounds of discrimination covered by Irish anti-discrimination law.

The ICTU (Irish Congress of Trade Unions) met with the Irish Government's Department of Justice, Equality and Law Reform before the transposition of the Racial Equality Directive and submitted a paper relating to amendments to existing legislation. However, relations with Government have been strained by the 42% cuts in the Equality Authority's 2008 budget that precipitated the resignation of the CEO and six other Board members, including both the ICTU nominees and those of IBEC, the Irish employers (Irish Business and Employers' Confederation). Individual unions interviewed were not consulted directly by government. However, they are all affiliated to ICTU and have membership on various ICTU committees, including the Executive Committee. They had an opportunity to voice their views through these Congress mechanisms as part of the above process.

The main Irish employers' organisation, IBEC, was also consulted about the implementation of the Directive, as was the Construction Industry Federation (CIF), the second largest employer association.

There was high awareness of the national anti-discrimination legislation, with a lower awareness of the Directive itself. A number of interviewees mentioned the increased importance of race as having become an issue for employers recently, due to the increased number of migrant workers, rather than the law *per se*.

4. Comments on the Equality Body

The Equality Authority is the national equality body. As outlined above, it underwent a 42% budget cut in 2008. These cutbacks and the proposed relocation of its headquarters to a regional location also resulted in the loss of experienced staff.

Both ICTU and IBEC have worked closely with the Equality Authority since its establishment. Both confederations have had two nominees on the Board of the

Authority since its establishment in 1998. Although recent cutbacks resulted in the resignation of the employer and union nominees, as outlined above, this membership appeared to be valued. *'We have a direct input into the functions and the ongoing strategy of the Equality Authority'* (IBEC interviewee). At an operational level also, there are *'huge overlaps with different projects that we [IBEC] work with them on'*. For example, IBEC is *'working on an Integrated Workplace project with the Equality Authority at present'*. The CIF interviewee has used the Authority's expertise in producing policies and codes of practice or best practice guides.

The ICTU interviewee sits on various bodies with the Equality Authority within the national partnership framework and they are currently co-operating on development of a new equality training initiative. All other union interviewees have occasional contact with the Authority, as needed, usually as a source of advice or contributing to training courses.

5. Trade Union and Employer policies and Measures

5.1 Trade Union policies and measures

The increasing number of migrants has been one of the stimuli to Irish unions to take up anti-racial/ethnic discrimination policies. Congress produced *Guidelines for Combating Racism and Planning for Diversity*. However, most of Congress' work has been in relation to all nine discriminatory grounds covered by the Irish anti-discrimination legislation e.g. a *Resource Manual* on Equality legislation for affiliates, covers the nine grounds, including race. The preface states:

Congress believes in equal rights for all workers and is committed to combating all forms of discrimination and promoting equality. It is widely recognised that the workplace is a strategic entry point to free society from discrimination and so Congress places great emphasis on supporting our affiliate trade unions in representing the interests of a very diverse membership (p.1).

The content explains the terms of the legislation in question and answer format. For example, the section on Race explains that discrimination on grounds of race means 'Discrimination on the basis of a person's race, colour, nationality or ethnic/national origin' (p.38). Answers are provided to questions including: 'What is meant by discrimination?' 'What areas of employment does the Act cover?' 'Are there any exemptions or exceptions to the prohibition of discrimination on the race ground?' 'Is harassment on grounds of race prohibited?' 'Is positive action allowed in relation to race?' 'Is procuring discrimination on the race ground prohibited?' 'Does the Act prohibit victimisation of an employee who brings a complaint of discrimination on the race ground?' 'How can an employee enforce rights under the Act?'

All ICTU training courses have an equality dimension reflecting the changes in law and in society. The ICTU website also reflects the current legal situation. The Executive Council of Congress is fully briefed on developments and there are a number of equality related committees. However, it is the affiliated unions who act at workplace level.

ICTU has passed a range of relevant motions at biennial delegate conferences, mainly in relation to migrant worker exploitation. A motion some time ago required all

unions to adopt a policy to promote equality proactively across all nine grounds *'both in their own union and in their collective bargaining in workplaces'* (ICTU interviewee); Congress is currently surveying affiliates to find out how actively they have engaged with this. That will give a picture of where things are.

MANDATE, the Shop and Bar Workers Union, has produced a draft policy document which includes a section dealing with equal opportunities and associated legislation. MANDATE has also formed ties with several NGOs supporting migrant workers:

We have a module on our shop stewards course which deals with the Equality Acts. We have done that in conjunction with the Migrant Rights Centre ... the Vice-Director of the Centre ... talked to the officials about migrant workers and the issues that they have and how we could deal with those.

The Services Industrial Professional and Technical Union (SIPTU) policies and practices in relation to racial/ethnic discrimination have evolved over the years but the main driver has been the increased number of non-Irish nationals employed in Ireland since the mid-eighties. A new Diversity Advisor and Trainer role was created, which aims to increase union and societal awareness of diversity and discrimination. This person works within the union, across unions and with migrant services agencies including the Migrant Rights Centre of Ireland and Immigrant Council of Ireland (NGOs). A committee of senior executive members is developing union policy on equality and diversity. SIPTU has hired a number of non-Irish officials to improve services to non-Irish national members.

The Irish Nurses Organisation (INO) created a new Overseas Nurses Section to cater for the needs of its 21% international membership. INO wanted to create a "safe" facility for international nurses to allow them to identify and raise the issues of concern to them. *'The INO responded to its membership's push'* (INO interviewee). This Section has been instrumental in bringing migrant nurses' issues to the fore including issues around visas and permits. Having a Section gives status and, importantly, the Section can bring motions to the annual conference. Creation of this structure was not as a result of the legislation; the issues have been brought to the fore by the Overseas Nurses themselves. *'It's like it [the legislation] was written for it [the migration]'*. The INO won a national Multiculturalism award for its Overseas Nurses Section.

MANDATE invested resources in translating documentation into six languages but felt the investment wasn't entirely worth it. There were concerns with the accuracy of translation and they felt some migrant workers preferred the documentation in English. This financial outlay is not considered sustainable for the future; the union will translate documentation if there is a clear need, but not as a general practice.

In 2007 the Irish Bank Official Association (IBOA) organised an equality conference that included workshops on racial equality. An IBOA respondent expressed scepticism about the commitment of the employers, who they felt, often took a minimalist approach: *'It's just something that they [the employers] tick the box on at the moment.'*

5.2 Employer policies and measures

All employer organisations interviewed strongly promote grievance and other policies and procedures within their member organisations. Their objective is to prevent and resolve problems that arise in relation to harassment or breach of other rights. Internal resolution of problems is strongly promoted as best practice.

IBEC interviewees confirmed that their members tend to be more affected by the culture and social climate and the need for taking actions to deal with what is happening, rather than legislation. IBEC produced a document for member companies entitled *Cultural Diversity in Business: Guidelines for addressing discrimination and promoting integration in workplaces*. This recognised that:

Migrant and minority ethnic workers can have different concerns and it is important that business takes a lead in ensuring that they are supported and included. Employers can do a lot to highlight the positive aspects of cultural diversity as well as meeting their legal obligations in terms of equality.

IBEC also has a *Diversity Working Group* where members can discuss various issues related to employment of migrant workers. IBEC is currently:

Talking regionally and sectorally to member companies about the business case for diversity and equality ... about setting up local networks ... looking at maybe mentoring between companies who are more established in integrating their workplaces and member companies who are more new to it or are struggling a little bit with it. (IBEC interviewee)

Anti-discrimination policies also feature in the Construction Industry Federation's (CIF's) model equality policy. It includes:

The [Company name] is committed to implementing positive action and providing a work environment which promotes equality for existing and prospective employees, free from discrimination in the following areas: gender, marital status, family status, race, religion, sexual orientation, disability, age and membership of the Traveller community.

The CIF interviewee believed that the labour shortages after 2004 were a large part of the explanation for the low levels of discrimination in the construction industry.

In the hotel industry, as part of the implementation plan for the national tourism strategy, all aspects of the employment of international workers in the industry were examined and specific policy recommendations were developed for Irish Hotels Federation (IHF) members. The industry introduced a Diversity Awards Scheme, which rewards individual hotels for good diversity practices – 'in recruitment, training, promotion, whatever' (IHF interviewee).

Some hotels became aware of a perception that Irish social activities are predominantly based around the pub and recognised that:

It automatically meant that people who didn't drink [alcohol] or [who were from] countries who didn't have the same emphasis on drink just weren't

interested in socialising with Irish staff'; they developed activities aimed at inclusiveness: social events around bowling nights or going to the dogs ... a summer barbeque.

A practice noted by IBEC was in some hospitals, where understanding the rituals of different religions in the treatment of deceased patients is promoted among employees, to provide maximum support and compassion to bereaved families.

IBEC, IHF and CIF reported initiatives in English language training, some of which have also been open to employees' families.

A language issue for the Irish Small and Medium Enterprises organisation (ISME) is that as a result of a legal ruling, employers may have to provide contracts and policies in employees' native languages. This is seen as overly burdensome on small businesses and may make them wary of employing non-nationals. ISME makes member firms aware of the law, provides templates for policy, advises on obligations and how to meet them, and helps with issues as they arise. ISME runs briefing sessions and provides training to members where equality is part of the agenda and race is one of the 'nine grounds' of equality legislation. ISME's view is that regulation is an unreasonable burden on small business and that ruling on employment law fail to take into account the circumstances of small business and are therefore excessively harsh in their impact.

6. Views on how to tackle discrimination better

All the union interviewees feel that it is important to have anti-discrimination laws. The MANDATE interviewee said: *'It's an extra bit in our armoury but it's really how you go about using it, what leverage you can use.'*

The ICTU interviewee noted a number of specific concerns: there are exceptions from the discrimination legislation to protect the religious ethos of certain organisations; exemption from the legislation for people working in their employer's homes; class actions are not possible in Irish law; there are no positive duties required by Irish equality legislation.

SIPTU and MANDATE expressed concern over the length of the complaints process, with MANDATE suggesting creation of a 'fast-track' through the process.

It's a lengthy process and it can be quite intimidating for people ... in the retail sector we have a lot of people coming to us complaining of discrimination ... you would ... go through their case with them and explain to them the process and really how long that process is going to take and invariably people turn away and say – well I'm only here for two-three years, it's really not worth my while.

The INO interviewee considered that the Irish law could be improved through ensuring that 'equality of outcome' was included and that 'positive action' could be implemented.

In contrast, none of the employer organisations suggested further changes to the legislation. The CIF representative feels that legislation, while needed, is a 'blunt

instrument'. Civic initiatives such as activities associated with St. Patrick's Day (National Day) celebrations were considered more useful than more legislation.

The IBEC interviewees feel that engraining equality, as a culture that goes beyond the letter of the law and embraces the spirit of the law is now important. They feel the Acts have generally been useful but the change in society has been more important; employers, they feel, generally want the best employees and don't care where they are from.

The IHF representative feels that legislation is already comprehensive and has no suggestions for additional measures. However, she suggested that it '*may be timely to re-emphasise the issues involved*', we '*may have taken our eye off the ball now*'; *most initiatives to date were 'market-driven at the time'*

The Health Services Executive Employers Association (HSE-EA) interviewee believes that it is important now to make sure that the law is effectively implemented. They see themselves as having an important role here in relation to health sector employers. However, the key driver for the work of this Agency is changes to legislation. '*The statutory action it [the law] affords to employees would be very important.*'

The ISME interviewee believes that while the legislation does offer protection to employees, it is an onerous burden on small business.

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