

Mr Brendan Howlin TD  
Minister for Public Expenditure and Reform  
Department of Public Expenditure and reform  
Government Buildings  
Upper Merrion Street  
Dublin 2

**RE: General Scheme of the Regulation of Lobbying Bill 2013**

2<sup>nd</sup> August 2013

Dear Minister

I am contacting you in relation to the General Scheme of the Regulation of Lobbying Bill 2013 published earlier this year. Congress supports the overall aim and approach set out in the draft legislation. We are currently finalising our analysis and preparing our full response on the Heads of Bill. In this regard Congress is grateful to your Department who have arranged a briefing for trade unions on the proposed legislation in early September. The aim of the briefing is to assist affiliated trade unions to understand the thinking behind the proposals and get an idea of how the legislation will operate in practice. This is important as 'trade unions' and 'labour organisations' are specifically named as falling under the proposed legislation.

We would however at this time, like to raise a significant concern in advance of the briefing in the hope that early identification of the problem will mean that possible solutions can be developed and discussed at the briefing.

Congress' view is that the Heads of Bill, as they are currently drafted, will create an unfair advantage for employers. This arises in the context of the exemption from the legislation provided to small firms (i.e all those with less than 10 employees and a turnover of less than €2 set out in Head 4.3.v).

Congress believes that this will give rise to an unfair advantage whereby these firms can communicate and discuss with a TD or public servant all of their reasons why, for example, they believe that an increase in the national minimum wage would be bad for their business or how their firm would be negatively affected by the Minister signing an order for a Joint Labour Committee or Registered Employment Agreement or how legislating for Paternity Leave would mean they would have to shut up shop.

The injustice of the legislation is that the employees of the same enterprise are captured under the 'grass roots' provisions (set out in the definitions Head 2 and in Head 4.1) meaning that their communications with their TD outlining for example, what the increase of €1 an hour in the National Minimum would mean or why the introduction of a sick pay

32 Parnell Square  
Dublin 1  
T +353 1 8897777  
F +353 1 8872012  
congress@ictu.ie  
www.ictu.ie

scheme is important fall within the scope of the legislation. It is true that we do not know what will be involved for members or trade unions directing the campaign to be able to comply with the legislation. It is unclear how much time and resources will need to be dedicated by unions to ensure that they and everyone involved in the campaign complies with the legislation because the 'Code of Practice' dealing with these questions has not been published with the draft Heads.

However the proposed difference in treatment between employers and employees in the legislation is unjustified and manifestly unfair. Why should trade union members' grass roots communications fall within the scope of the legislation when their employers' communications are exempt?

Given the costs, both financial and in terms of human resources the exemption will provide small-firm employers and their representative groups with a significant advantage compared to trade union members and their representative groups. Especially at times when for example, the Minister for Jobs Enterprise and Innovation is considering making an Employment Regulation Order establishing pay, terms and conditions in respect of a Joint Labour Committee or Registered Employment Agreement or when new employment rights are being considered.

Additional concerns arise in relation to larger employers using law firms to lobby against pay or employment rights under the cloak of 'client confidentiality' or using other tactics to dodge the legislation such as 'off shore' lobbying for example, the American Chamber of Commerce has significant influence or a large employer using an Embassy to avail of the exemptions at Head 4.3.(i).

As outlined in earlier submissions, Congress is supportive of the legislation and we will continue to work to ensure that the legislation properly captures lobbying activity and that it does so in a way that respects normal trade union activity, including 'collective bargaining', 'collective action' and 'social dialogue' initiatives. A number of practical concerns about how the legislation might be used to frustrate the practice of trade union rights have previously been raised by Congress and these have not been addressed in the Heads. We will bring forward suggestions for amendment in our comprehensive submission following the briefing.

We look forward to hearing from you.

Yours sincerely



---

Esther Lynch  
Legislation and Legal Affairs